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Supreme Court of the United States

OCTOBER TERM, 1950

No. 461

**STACY C. MOSSER, SUCCESSOR TRUSTEE OF
NATIONAL REALTY TRUST AND FEDERAL
FACILITIES REALTY TRUST, ET AL., PETI-
TIONERS,**

vs.

**PAUL E. DARROW, FORMER TRUSTEE OF NA-
TIONAL REALTY TRUST AND FEDERAL FACILI-
TIES REALTY TRUST**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

**PETITION FOR CERTIORARI FILED DECEMBER 18, 1950,
CERTIORARI GRANTED FEBRUARY 26, 1951.**

IN THE
Supreme Court of the United States

OCTOBER TERM, 1950.

No.

IN THE MATTER OF FEDERAL FACILITIES REALTY
TRUST, A COMMON LAW TRUST, AND NATIONAL
REALTY TRUST, A COMMON LAW TRUST,
Debtors.

STACY C. MOSSER, SUCCESSOR TRUSTEE, ET AL.,
Petitioners,

vs.

PAUL E. DARROW, FORMER TRUSTEE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.

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In the
United States Court of Appeals
For the Seventh Circuit

In the Matter of Federal Facilities Realty Trust, a Common Law Trust, and National Realty Trust, a Common Law Trust,

Debtors.

PAUL E. DARROW, Former Trustee,

Appellant,

No. 9935

vs.

STACY C. MOSSER, Successor Trustee, et al.,

Appellees.

JOHN W. GUILD, Successor Trustee, etc.,

Appellant,

No. 9936

vs.

PAUL E. DARROW, Former Trustee, et al.,

Appellees.

**APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.**

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In the Matter of
FEDERAL FACILITIES REALTY
TRUST, a Common Law Trust,
Debtor.

In Proceedings
Under
Section 77-B
No. 58334

In the Matter of
NATIONAL REALTY TRUST, a
Common Law Trust,
Debtor.

In Proceedings
Under
Section 77-B
No. 58335

PAUL E. DARROW, Former Trust-
tee,

Appellant,

vs.

STACEY C. MOSSER, Successor
Trustee herein,

Appellee,

John W. Guild, Successor Trustee,
under a Trust Indenture herein,
Appellee,

Securities and Exchange Commission,
Appellee.)

1 PLEAS had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of April (it being the 4th day thereof) in the Year of Our Lord One Thousand Nine Hundred Forty-Nine and of the Independence of the United States of America, the 173rd Year.

Present:

Honorable John P. Barnes, District Judge
Honorable Philip L. Sullivan, District Judge
Honorable Michael L. Igoe, District Judge
Honorable William J. Campbell, District Judge
Honorable Walter J. LaBuy, District Judge
Honorable Elwyn R. Shaw, District Judge
Honorable William H. Holly, District Judge

2

Petition of Joseph R. Wall, et al

Roy H. Johnson, Clerk

Thomas P. O'Donovan, Marshal

Tuesday, April 12, 1949

Court met pursuant to adjournment

Present: Honorable William J. Campbell, Trial
Judge

2

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

In the Matter of

FEDERAL FACILITIES REALTY
TRUST, a common law trust,
Debtor.

In Proceedings
Under Section
77-B
No. 58334

Be It Remembered, that on to-wit the 26th day of December, 1934, the above-entitled action was commenced by the filing of a Petition of Joseph R. Wall, et al., in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

3

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334) • •

Be It Further Remembered, that, on the same day, to-wit, the 26th day of December, 1934, the above-entitled action was commenced by the filing of a Petition of Joseph R. Wall, et al., in the office of the Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division:

4 And afterwards on, to wit, the 15th day of October, 1943 came the Trustee, Paul E. Darrow by his attorneys and filed in the Clerk's office of said Court his certain Final Report And Account, From April 25, 1935, and including request for allowance of additional fees for services rendered as such Trustee for said period, in Cause No. 58334, in words and figures following, to wit:

5

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

In the Matter of
NATIONAL REALTY TRUST, a
common law trust,

Debtor.

In Proceedings
Under
Section 77-B
No. 58335

FINAL REPORT AND ACCOUNT OF PAUL E. DARROW, TRUSTEE, FROM APRIL 25, 1935 TO AND INCLUDING AUGUST 13, 1943, AND INCLUDING REQUEST FOR ALLOWANCE OF ADDITIONAL FEES FOR SERVICES RENDERED AS SUCH TRUSTEE FOR SAID PERIOD.

To the Honorable William H. Holly, Judge of said Court:
Now comes your Trustee, Paul E. Darrow, and respectfully represents as follows:

1. This Honorable Court on April 25, 1935 entered an order approving the petition herein of certain creditors as properly filed under Section 77B of the Bankruptcy Act.

2. Said order of April 25, 1935 appointed Paul E. Darrow as Temporary Trustee of the Debtor and fixed his bond in the sum of \$5,000, which was duly approved by this Honorable Court on April 25, 1935.

3. The scope of the duties of your Trustee was outlined by said order of April 25, 1935, section 3 of which is as follows:

"3. That said Paul Darrow be, and he is hereby authorized and directed to operate, maintain and continue the business of the Debtor, and to manage its property until the further order of this court; that

said Paul Darrow shall have and exercise consistently with the provisions of said Section 77B, all the powers of a trustee appointed pursuant to said section, subject at all times to the control and order of this court, and to such limitations, restrictions, terms and conditions as this court may from time to time impose and prescribe, and in general, shall have full power and authority to do all things necessary or convenient in the operation of said business and property and maintenance and preservation of said estate."

4. On May 24, 1935 this Honorable Court entered an Order Making Permanent Appointment of Temporary Trustee. A portion of said order is as follows:

"Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the appointment of Paul E. Darrow, heretofore appointed Temporary Trustee of Federal Facilities Realty Trust, Debtor, be and it is hereby made permanent and the said Paul E. Darrow as such Permanent Trustee shall continue to have and be vested with all the rights, powers, title and authority possessed by him as Temporary Trustee and shall have all of the rights, powers, authority and title vested in a trustee in bankruptcy under the law and in a receiver in equity."

5. Said order of May 24, 1935 fixed the amount of the bond of Paul E. Darrow as Permanent Trustee in the sum of \$25,000 which was duly filed in and approved by this Honorable Court on May 25, 1935.

6. This Honorable Court entered an order on June 18, 1935 authorizing your Trustee to enter into agreements with any or all of the corporations which are subsidiaries of the Debtor herein for the conduct by your Trustee of the management of said subsidiaries. Pursuant to such authorization and in accordance with various provisions in plans of reorganization, your Trustee has managed such subsidiaries.

7. On July 26, 1935 this Honorable Court entered an order concerning the compensation of your Trustee, a portion of which is as follows:

"Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that Paul E. Darrow, Trustee herein, is hereby authorized and directed to pay himself an allowance on account in the sum of \$300.00 for the

period from April 25, 1935 to May 24, 1935, and at the rate of \$500.00 a month thereafter for his services to the Debtor herein and to a certain National Realty Trust, concerning which proceedings are pending herein under Case No. 58335, said monthly allowance of \$500.00 to be divided between the said Debtors in the proportion which the income of each Debtor from month to month bears to the combined income of both said Debtors in each month."

7 8. Your Trustee has followed the directions of said order of July 26, 1935 with respect to such compensation to him.

9. Pursuant to the aforesaid orders your Trustee employed Messrs. Scovell, Wellington & Company, certified public accountants, of 105 West Adams Street, Chicago, Illinois, to prepare from the books of the Federal Facilities Realty Trust and its subsidiary companies statements showing the financial condition of the Trust and its subsidiary companies as at May 31, 1935, the result of their operations for the period from November 1, 1933 to May 31, 1935 and an analysis of their surplus accounts from their organization up to May 31, 1935. Pursuant to such employment Messrs. Scovell, Wellington & Company prepared, and your Trustee's attorneys filed with this Court, the following documents:

Federal Facilities Realty Trust, National Realty Trust, And Their Subsidiary Corporations. Financial Statements As At May 31, 1935. August 17, 1935.

National Realty Trust. Financial Statements As At May 24, 1935. August 30, 1935.

10. The aforesaid financial statements of Federal Facilities Realty Trust and its subsidiaries were filed in these proceedings on or about the above dates, together with companion statements, as above set forth, of National Realty Trust, a companion proceeding, and its subsidiaries, and have been available to all parties in these proceedings and in the companion proceedings of National Realty Trust, a common law trust, District Court Case No. 58335.

11. Your Trustee asks that an order may be entered herein approving the aforesaid financial statements of Federal Facilities Realty Trust and its subsidiaries as in compliance with the orders of this Honorable Court heretofore entered herein, and approving said documents.

12. Pursuant to the aforesaid orders your Trustee has conducted the business of the Debtor, which is a common law trust owning all or a portion of the equity in some fourteen separate properties. Immediately upon your Trustee's appointment he discovered that many of these properties were in need of reorganization. In one instance such reorganization proceeding was pending at the time of your Trustee's appointment, while in other instances your Trustee himself through his stock control of said subsidiary corporations initiated reorganization proceedings. Such proceedings required a considerable period of time, but your Trustee is now able to report that such reorganizations have, with the exception of the Roseland Building Corporation, been completed. A statement setting forth the present status of said subsidiaries is attached hereto, marked Exhibit A, and made a part hereof.

13. In his conduct of the Debtor's business as aforesaid, your Trustee has received interest payments from bonds of the subsidiary corporations held by the Debtor, and has received management fees from the operation of the properties of the subsidiaries of the Debtor. Further, in the aforesaid conduct of the Debtor's business, your Trustee has used surplus funds from time to time for the purchase of bonds of the said subsidiary corporations. The face amount of the bonds of subsidiary corporations held by the Debtor prior to your Trustee's appointment amounted to approximately \$8,300. Bonds purchased as aforesaid by your Trustee, of a total face value of \$262,800, required the expenditure of \$31,864.55. Interest received on such bonds owned by the Debtor prior to your Trustee's appointment and on bonds of subsidiaries purchased by your Trustee subsequent to his appointment totalled on August 13, 1943, \$25,542.34. These securities at prices prevailing on August 13, 1943 had a value of \$38,321.50 and are producing an annual income as of August 13, 1943 of \$3,765.50. This is more specifically shown in statement hereto attached entitled "Summary Of Cash Receipts And Disbursements, Period From June 1, 1935 to August 13, 1943," marked Exhibit B and made a part hereof, and fully explained in communication addressed to the Honorable William H. Holly, United States District Court, Chicago, Illinois, signed by

Paul E. Darrow, dated October 1, 1943, attached hereto, marked Exhibit D, and made a part hereof.

14. In the conduct of the Debtor's business as aforesaid, your Trustee has made advances to subsidiary companies where he deemed it advisable. The present outstanding amount of such advances is \$4,020, as shown on Exhibit B attached hereto and made a part hereof, which amount your Trustee expects will be repaid within a reasonable time.

15. The aforementioned Exhibit B sets forth in summary form your Trustee's conduct of the business of the Debtor pursuant to the aforesaid orders. Your Trustee asks that an order be entered herein approving said statement.

16. Attached hereto, marked Exhibit C, and made a part hereof, is a document entitled "Federal Facilities Realty Trust, Balance Sheet As At August 13, 1943." This statement is from the books and records of the Debtor as taken over by your Trustee, and does not reflect present values. Your Trustee presents it only for purposes of general information.

17. At various times, upon motion of the Securities and Exchange Commission, various provisions of Chapter X of the Bankruptcy Act have been by order of this Court applied to the within proceedings. For more complete information as to said provisions, reference is made to orders entered herein dated January 31, 1941 and August 5, 1943.

18. On January 19, 1942 an order was entered herein upon the application of the Securities and Exchange Commission appointing Frederick B. Andrews, an independent public accountant, and authorizing and directing him to make a thorough financial investigation and to report thereon to the Court with respect to certain matters as more fully outlined in said order; that on May 20, 1942 an order was entered herein modifying in certain particulars various provisions of the order of January 19, 1942; that thereafter said Frederick B. Andrews filed in the Court herein on the dates set forth below the following documents:

June 9, 1942 "Report on Certain Transactions in Securities issued by the Debtor and its Subsidiaries"

- July 3, 1942 "Comparative balance sheets
December 31, 1941 and May 31, 1935 and
Statements of Income and Surplus
By Periods—From June 1, 1935 to Decem-
ber 31, 1941 (Per Books—Without Analy-
sis or Adjustment)
of the Debtor Herein and its Subsidiaries"
- Aug. 5, 1942 "Report on Pay Roll Accounts
January 22, 1937 to December 31, 1941."

Your Trustee represents that said reports have been avail-
able to all parties in these proceedings.

19. That thereafter the said Frederick B. Andrews filed
herein his petition for compensation for said work as
authorized and directed in said orders of January 19, 1942
and May 20, 1942, requesting a total amount of compensa-
tion in the sum of \$9,893.95, of which \$4,859.05 related
to the estate of the Debtor herein, and \$5,034 to the estate
of National Realty Trust, companion Debtor in cause No.
58335; that there has been paid on account of said services
by the Debtor, pursuant to orders of this Court, the amount
of \$2,946.68 as shown in Exhibit B; that the balance of
said sum, or the difference between the amount requested
and the amount paid on account, amounting to the sum of
\$1,912.37 has been questioned by your Trustee and is pend-
ing before this Court.

20. That at the time of the appointment of your Trust-
tee herein, George H. Andresen and Harry R. Holden were
Trustees of the Debtor herein and of the National Realty
Trust heretofore referred to as companion proceed-
11 ing; that George H. Andresen was chief executive
of both trusts and of the subsidiary corporations of
the respective trusts; that at the time of the appointment
of your Trustee herein there was in the hands of said
Andresen certain assets of both Trusts and various sub-
sidiary corporations, consisting of \$15,419.69 in cash and
various securities; that shortly after the appointment of
your Trustee the said Andresen delivered said cash funds
amounting to \$15,419.69 and said securities to your Trust-
tee, as Trustee of Federal Facilities Realty Trust, the
Debtor herein, and as Trustee of National Realty Trust,
companion proceeding as above set forth; that since the
receipt of said funds and securities from said Andresen
your Trustee has managed said funds and said securities
in a separate account entitled "Paul E. Darrow, Chair-

man Account"; that attached hereto and made a part hereof, marked Exhibit E, is a statement entitled "Paul E. Darrow, Chairman Account," showing all operations of Paul E. Darrow as Trustee herein in said account since receipt of said account down to and inclusive of September 30, 1943.

21. Shortly prior to August 10, 1943 your Trustee submitted in writing his resignation to the Honorable William H. Holly, Judge of said Court, as such Trustee, and this Court entered an order on August 10, 1943 appointing Stacy Mosser Successor Trustee; that said order fixed Mr. Mosser's bond as Successor Trustee in the sum of \$25,000, which bond was duly filed in this Court and approved by order dated August 11, 1943; that Mr. Mosser thereafter on August 13, 1943 took possession of the property and assets of said Debtor as Successor Trustee and since said date has been managing and operating the business of the Debtor.

22. Attached hereto, marked Exhibit C, to which prior reference has been made, is a statement entitled "Federal Facilities Realty Trust, Balance Sheet, As At August 13, 1943," which shows cash on hand and in bank in the sum of \$10,458.56, together with various accounts and notes receivable, and together with bonds of subsidiary companies, all of which your Trustee Paul E. Darrow has turned over as of August 13, 1943 to Stacy Mosser, Successor Trustee herein.

23. That for the period beginning April 24, 1935 and ending June 1, 1935 your petitioner received on account compensation at the rate of \$300 per month and that since June 1, 1935 down to and inclusive of July 31, 1943 your Trustee has received on account compensation at the rate of \$500 per month, which payments, under orders within the proceedings herein and within the National Realty Trust proceeding dated July 26, 1935, were to be divided between the said Debtors in the proportion which the income of each Debtor from month to month bore to the combined income of both said Debtors in each month; that pursuant to said order of July 26, 1935 Paul E. Darrow, as Trustee herein, has received on account of said services as Trustee the total sum of \$27,843.63.

24. That in addition to the compensation received by him as above set forth, your Trustee has in various reorganization proceedings of subsidiary companies of the

Debtor, by orders of this Court in said proceedings, received for services rendered by him the following amounts of compensation:

Name of Subsidiary Corporation	District Court Case No.	Amount of Compensation
Chicago Post Office Service Building Corporation	64451	\$1,500
Dallas Parcel Post Station, Incorporated	60730	750
Ferry Station Post Office, Incorporated	59504	2,500
Quincy Station Post Office Building Corporation	60072	1,500

25. That, therefore, your Trustee has received on account of services rendered as Trustee of the Debtor total compensation as of August 13, 1943 amounting to the sum of \$34,093.63.

26. That the services of your Trustee have extended over the period of April 25, 1935 to August 13, 1943; that the Federal Facilities Realty Trust, Debtor herein, at the time the reorganization proceedings herein were filed, owned the stock equity in fourteen subsidiary real estate corporations; and also owned bonds of its various subsidiaries; that shortly after your Trustee became Trustee of the Debtor he caused himself to be elected President of each of the fourteen subsidiary companies, and during this entire period has acted as the chief executive officer of said subsidiaries; that most of the properties of the subsidiary companies consisted of buildings erected for postoffice utility and had originally been designed for postoffice purposes and leased to the Postoffice Department; that shortly before your Trustee was appointed the Postoffice Department changed its basic policy into one of erecting its own buildings rather than that of leasing buildings; that in consequence of this policy it has been necessary during the above period for your Trustee to initiate or to assist in the reorganization of various properties of the subsidiaries; that during this period eleven of the fourteen subsidiary corporations belonging to the Federal Facilities Realty Trust, Debtor herein, have been reorganized, and your Trustee was able substantially to retain the equity or controlling stock ownership for the parent company, the Federal Facilities Realty Trust, Debtor herein,

subject to certain qualifications as contained in various plans of reorganization; that your Trustee's services have largely been concerned with management and also with problems of reorganization of the subsidiary companies, as above set forth; that during this period also there have been questions of income tax deficiency assessments which have been largely eliminated as a result of services rendered by your Trustee with substantially no additional expense to said subsidiary companies or to the Debtor herein, and which have resulted in substantial savings to the Debtor herein and its subsidiaries; that during said eight-year period from 1935 to 1943, your Trustee has devoted all of his time to his duties as Trustee of 14 said Federal Facilities Realty Trust, the Debtor herein, and as Trustee of National Realty Trust, companion common law trust, also under reorganization at the present time before this Court and numbered Case 58335; that your Trustee's services to the Debtor estate herein have been of great value to said estate in that the constructive programs and policies adopted by your Trustee have greatly enhanced the actual and potential value of the chief asset of said Debtor corporation, namely, the stock equities of the fourteen subsidiary companies; that attached hereto and marked Exhibit D is a communication signed by Paul E. Darrow, dated October 1, 1943 and addressed to the Honorable William H. Holly, United States District Court, Chicago, Illinois, which sets forth in summary form the beneficial services rendered to said Debtor estate by Paul E. Darrow as Trustee herein; that as above set forth your Trustee has heretofore received on account the sum of \$27,843.63, allowed to him by orders of this Court, and in addition thereto, has received the sum of \$6,250, allowed to him by order of this Court for his services in reorganizing four of the subsidiary corporations of the Debtor herein; that your Trustee, in view of the time spent, services performed, and the results obtained in and about the reorganization proceedings herein covering a period in excess of eight years, believes that at this time the allowance by this court of the sum of \$5,000 would represent a fair and reasonable final allowance to him as Trustee in payment of the balance of fees due him for the services performed herein.

27. That your Trustee by leave of Court first had and obtained, employed the firm of attorneys of Adams Nelson

& Williamson as counsel to assist and advise him in the within proceedings; that said firm of attorneys has filed herein its petition seeking compensation for services rendered by it to your Trustee; that your Trustee recommends that a reasonable allowance be made to said firm of attorneys.

15 28. Your Trustee represents that he has in all matters throughout this proceeding followed the directions of this Honorable Court as given to him by orders of Court entered herein, and requests that all his acts as Trustee from the date of his appointment on April 25, 1935 to and including August 13, 1943 be approved by this Honorable Court.

Wherefore, your Trustee prays that an order may be entered herein:

1. Approving the statements entitled "Federal Facilities Realty Trust, National Realty Trust, and Their Subsidiary Corporations. Financial Statements as at May 31, 1935, August 17, 1935" and "National Realty Trust. Financial Statements as at May 24, 1935. August 30, 1935", prepared by Scovell, Wellington & Company and heretofore filed herein, as in compliance with orders of this Court heretofore entered herein, and approving said statements.

2. Approving the statement hereto attached marked Exhibit B and entitled "Summary of Cash Receipts and Disbursements, Period from June 1, 1935 to August 13, 1943."

3. Approving the statement hereto attached marked Exhibit E and entitled "Paul E. Darrow, Chairman Account."

4. Approving this Report and Account of Paul E. Darrow as Trustee and all of his acts as Trustee herein from the date of his appointment and qualification as Trustee, April 25, 1935, up to and including August 13, 1943.

5. Fixing the amount of additional compensation due Paul E. Darrow, as Trustee herein, at this time.

6. Discharging him from any and all liability as Trustee herein and cancelling his bond.

7. Providing that Stacy Mosser, Successor Trustee herein, be required:

16 (a) To assume and agree to pay Paul E. Darrow, your Trustee, such additional sum as may be fixed

and allowed at this time by this Court to Paul E. Darrow for services rendered as Trustee herein, as requested in this petition.

(b) To assume and pay to Adams Nelson & Williamson as attorneys for Paul E. Darrow, as Trustee herein, such sums as may be allowed by this Court for services rendered by them to Paul E. Darrow as Trustee, for the period commencing April 25, 1935 down to and inclusive of August 10, 1943 and for services rendered subsequent to August 10, 1943 involving the preparation and filing of the final report and account of Paul E. Darrow as Trustee, as required to be prepared and filed by the order dated August 10, 1943 appointing Stacy Mosser as Successor Trustee herein in lieu of Paul E. Darrow, Trustee resigned.

8. Granting your Trustee such other and further relief as to this Honorable Court shall seem meet.

Paul E. Darrow

As Trustee of Federal Facilities Realty Trust, a common law trust, Debtor.

District of the United States)
State of Illinois) ss.
County of Cook)

Paul E. Darrow, being first duly sworn, deposes and says that he formerly was the Trustee of Federal Facilities Realty Trust, a common law trust, Debtor in these proceedings; that he has read the foregoing Final Report and Account and Petition by him subscribed; that he knows the contents thereof; and that the same is true.

Paul E. Darrow

Subscribed and Sworn to before me
this 15th day of October, 1943.

Agnes Stasio
Notary Public

(Seal)

14

Exhibit "A"

17

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334) • •

AFFIDAVIT OF TRUSTEE

District of the United States)
State of Illinois) ss.
County of Cook)

Paul E. Darrow, being first duly sworn, on oath deposes and says that he formerly was the Trustee of Federal Facilities Realty Trust, a common law trust, Debtor; that as such Trustee he performed services on behalf of said Federal Facilities Realty Trust; that no agreement has been made, directly or indirectly, and that no understanding exists for a division of fees between him and the Debtor, any creditor of the Debtor, the attorney of any of said parties, or with any other person.

Paul E. Darrow

Subscribed and Sworn to before me
this 15th day of October, 1943.

Agnes Stasio
Notary Public

(Seal)

18

EXHIBIT A.

Summary Present Status Underlying Companies
Federal Facilities Realty Trust as of
August 13, 1943.

Chicago Post Office Service Building Corporation owns the three story brick and concrete fire-proof building located at 1015-55 West Congress Street, Chicago, Illinois which was erected in 1926 for lease to the Post Office Department at an annual rental of \$94,000. It has been occupied continuously since the government moved from the building. When the property was vacated in December, 1938, same was leased to Goldblatt Brothers at an annual rental of \$20,000, rental to begin February 1, 1939 with the exception of a portion of the first floor space which was later leased to the Chicago Truck Leasing Company

beginning April 1, 1939 at an annual rental of \$6,000, making the total annual income from this property \$26,000. The lease with Goldblatt Brothers provided for them furnishing their own heat, including the space later occupied by the Chicago Truck Leasing Company. Beginning October 1, 1941 the Chicago Truck Leasing Company rental was increased to \$10,000 annually which rate they paid up to and including June, 1942. In the fall of 1942 negotiations were started with the General Motors Truck & Coach Division for leasing a portion of the building and cancellation of the Goldblatt Brothers lease as well as leasing the space formerly occupied by the Chicago Truck Leasing Company. This has brought about leases being entered into with the General Motors Truck & Coach Division together with four other tenants, including rental of the basement, bringing the total annual rental for the building up to \$59,349.12.

A reorganization of the indebtedness on this property resulted in extending all bonds to November 1, 1956 and reducing First Mortgage interest from $5\frac{1}{2}\%$ to 5% per annum on a cumulative basis and from $6\frac{1}{4}\%$ to 4% on the General Mortgage bonds on a non-cumulative basis. The plan provides for 3% interest being paid on First Mortgage bonds and 2% on Second Mortgage bonds. 19 after which earnings are divided into two equal parts, one-half for Sinking Fund and the other one-half for additional interest payments on the First Mortgage bonds and additional sinking fund. Interest has been paid continuously at the rate of 3% per annum on First Mortgage bonds since reorganization and an additional 1% on First Mortgage bonds was distributed May 1, 1938, leaving unpaid accumulations on First Mortgage bond interest of 13%. 1% has been paid on the General Mortgage bonds each six months up to May 1, 1939 and $\frac{1}{2}$ of 1% was paid on May 1, 1941, no other interest payments having been made on the General Mortgage bonds. Since reorganization First Mortgage bonds have been reduced from \$580,500 to \$418,000 and the General Mortgage bonds from \$112,300 to \$80,300. The present income from the property, if maintained, will permit interest to be paid at the full rate of 5% on the First Mortgage bonds and 4% on the General Mortgage bonds as well as provide for payment on accumulations of First Mortgage interest and sinking fund as contemplated under the plan. All taxes are in current position.

Columbus Parcel Post Building, Inc. owns a three story building located at 52-62 East Spring Street, Columbus, Ohio, which building is leased entirely to the Post Office Department under a non-cancellable lease running to May, 1947 at an annual rental of \$54,250.00. No reorganization of the indebtedness on this property was necessary as the income is sufficient to pay ground rental, operating expenses, 6½% interest on First Mortgage bonds and serial maturities as they mature. The First Mortgage leasehold bond issue has been reduced from \$261,500 to \$168,500 including bonds held in the treasury uncanceled. All taxes are in current position.

Station "D" Building Corporation owns a one story and part two story brick building which was originally erected for post office purposes but remained vacant for some time after being vacated by the government. It is presently leased by one firm which has been in the premises for three years starting at an annual rental of \$2,700.00 with an increase of \$300.00 annually and a new lease was entered into beginning August 1, 1943 for two years providing for an annual rental of \$3,600.00. The 25 feet of vacant property adjoining the building on the north is also owned by the company. Reorganization of the indebtedness on this property resulted in issuing one share of common stock for each \$100.00 par value of bonds for which 1,039 shares were authorized and the Federal Facilities Realty Trust received 50 shares for its equity. I acquired \$30,000 of the bonds in the Federal Facilities Realty Trust at a cost of \$996.00 which were exchanged for 300 shares of stock, giving the Federal Facilities Realty Trust approximately a 25% ownership in this property at a nominal cost. All general real estate taxes are in current position. There is still \$1,800.00 unpaid on attorneys fees which are being paid as earnings permit, after which \$1,327.54 due in accounts payable will likewise be paid and there will be no indebtedness on this property other than special assessments which will be given attention in due course.

Dallas Parcel Post Station, Inc. owns a two story brick and part basement fire-proof building covering an entire square block, fronting 200 feet on Young, Austin, Market and Wood Streets, Dallas, Texas. The building was completed in 1936 and leased to the Post Office Department at an annual rental of \$59,000.00. The Post Office Depart-

ment vacated the building at the time of erecting its own post office building in Dallas, Texas, since which time \$20,277.18 has been expended for improvements to make the premises suitable for commercial purposes, all of which have been paid from earnings of the property. The property is now completely rented to five tenants at \$18,600.00 annually which includes \$600.00 annually for the basement which has just been rented on a month to month basis at \$50.00 per month. All taxes are in current position and the property is under the supervision of a trust committee.

Reorganization resulted in maturity of the bonds being extended to September 15, 1950. The interest date on the First Mortgage bonds was reduced from 6% to 3% on a cumulative basis and on the Second Mortgage bonds from 6% to 2% non-cumulative. Interest coupons on First Mortgage bonds up to September 15, 1939 have been paid and it is contemplated that March 15, 1940 coupons will shortly be paid. No interest is being paid on the Second Mortgage bonds at this time. The First Mortgage issue has been reduced from \$386,500 to \$282,000 including bonds held in treasury and the Second Mortgage issue from \$40,000 to \$26,000.

Ferry Station Post Office, Inc. owns the four story fireproof building located at Washington, Merchant and Embarcadero Streets, San Francisco, California which was completed in 1924 and leased entirely to the post Office Department at an annual rental of \$107,300. The Post Office Department built its own building in San Francisco which resulted in temporarily leasing the building for warehouse purposes at an annual rental of \$19,500 and in December, 1941 lease was negotiated with the United States Government for use of the entire building upon completion of alterations at an annual rental of \$90,000 for the first year, \$85,000 for the second year, \$80,000 for the third year, \$75,000 for the fourth year and \$70,000 for the fifth year of the lease, said lease however providing that same terminate each year on June 30th and subject to renewal by option contained therein at the rentals stated. It was necessary to spend \$51,868.21 in remodeling the building for which the necessary financing was arranged and which has since been paid out of earnings. The indebtedness on the property was reorganized by extending the maturity date of the bonds to June 1, 1952 and reducing the interest rate on First Mortgage bonds from 6% to 3%

on a cumulative basis which has been paid continuously at that rate with the exception of December 1, 1941 when 1% was distributed and the balance of $\frac{1}{2}$ of 1% was added to the principal of the bonds and is payable at maturity. The Second Mortgage bond interest was reduced from 7% to 1% non-cumulative. $\frac{1}{2}$ of 1% interest was distributed on Second Mortgage bonds on December 1, 1940 and 1% on December 1, 1942, and $\frac{1}{2}$ of 1% on June 1, 1943. I acquired \$82,200 of the Second Mortgage bonds which are currently held by the Federal Facilities Realty Trust at a cost of \$868.50 on which interest received to date by the Trust is \$3,170.00 and they are currently receiving \$822.00 annually. The reorganization plan provides that after payment of operating expenses and taxes, 3% interest on First Mortgage bonds and 1% interest on Second Mortgage bonds, the balance be used for retirement of First Mortgage bonds. Since reorganization, First Mortgage issue has been reduced through operation of the sinking fund from \$655,300 to \$273,100. There has been no reduction in the Second Mortgage bonds which remain at \$197,900, but as stated before \$82,200 of these bonds have been purchased for the Trust.

Irving Park Post Office Building Corporation owns the one and two story brick building located at the southeast corner of Cicero and Byron Streets, Chicago, Illinois occupied entirely by the Post Office Department under lease running to September 30, 1944 at an annual rental of \$5,050.00. This property upon completion was originally leased for \$12,850.00 annually which rental, however, included furnishing heat, light and water which is not provided for under the present lease. Reorganization proceedings resulted in First Mortgage bond interest being reduced from $6\frac{1}{2}\%$ to 3% cumulative and Second Mortgage interest from 7% to 1% non-cumulative with the balance to be used for retirement of First Mortgage bonds until paid off, then to be used in retirement of Second Mortgage bonds. The maturity date of all bonds was extended to June 15, 1950. Since reorganization the First Mortgage issue has been reduced from \$47,000 to \$32,500, the Second Mortgage issue from \$40,000 to \$28,500. All taxes are in current position. Interest is paid regularly each six months as provided under the plan.

McKinley Park Station Building Corporation owns the one and two story building located at 3405-09 Archer Ave.

nue including the vacant property adjoining on the west running to the corner which was originally 23 leased to the Post Office Department at \$8,600.00 annually. Reorganization proceedings resulted in balance of First Mortgage bond issue of \$44,000 being extended to January 1, 1951 and the interest rate being reduced from 6½% to 3% per annum. Since reorganization, some difficulty has been experienced in renting this property but it is currently rented at \$3,496.44 annually. The bond issue has been reduced from \$44,000 to \$25,500 of which \$8,000 are held by the Federal Facilities Realty Trust. All taxes are in current position. Interest has been paid since reorganization from July 1, 1935 to July 1, 1937 at 3% per annum. No payments were made in 1938 and 1939; 1½% in 1940; 3% in 1941; 1½% in 1942 and 3% in 1943.

North Halsted Post Office Building Corporation owns the one story brick building located at 913-15 Montana Street, Chicago, Illinois which is currently rented to the State of Illinois Unemployment Department at \$5,700.00 annually including heat and janitor service. The property was originally erected for the use of the Post Office Department and leased for ten years at an annual rental of \$7,500.00 which rental did not include furnishing heat, light and water. A voluntary reorganization without court proceedings was effected on this corporation reducing the interest rate on bonds of 6½% to 3% and extending the maturity date to April 1, 1950. Considerable difficulty was had in securing a tenant for this building after it had been vacated by the Post Office Department due to the existing zoning ordinance. An effort was made to secure a change in the ordinance on this block without success but eventually we were able to lease it for its present purposes. Since reorganization, the bond issue has been reduced from \$61,500 to \$45,700. Taxes are in current position.

Quincy Station Post Office Building Corporation owns the four story brick building located at the northeast corner of Jefferson and Quincy Streets, Chicago, Illinois. This building was originally erected in 1921 for post office purposes and leased at an annual rental of \$123,500.00. This Corporation was reorganized in 1935 as it was learned that the Post Office Department was going to erect its own building and move from the premises. The lease 24 was non-cancellable. Therefore, the Post Office De-

partment was obliged to pay the rental until May, 1941 which permitted interest to be paid at the rate of 5% per annum in accordance with reorganization plan up to and including January 1, 1942. The plan provided for a reserve of \$60,000.00 for remodeling of the building. The actual cost of remodeling done to date was \$66,739.58. The First Mortgage bond issue has been reduced from \$934,500 to \$318,500. The Second Mortgage from \$82,700 to \$32,800. The interest rate on the First Mortgage bonds was reduced from 6% to 5% cumulative and the Second Mortgage bonds from 6½% to 5% non-cumulative. The property is now leased to three tenants at an annual rental of \$26,994.96. The July, 1942 interest coupon has been taken up and funds are now available with which to pay the January 15, 1943 coupons as soon as same is approved by the Board of Directors. All taxes are in current position.

Roseland Building Corporation owns the building located at 17-23 East 115th Street, Chicago, Illinois formerly occupied by the Post Office Department at an annual rental of \$9,200.00. Same is a one and two story brick building now occupied by the Lakeside Metal Service, Inc. at an annual rental of \$1,800.00 which lease entered into a little more than a year ago, provided for a rental of \$1,500.00 for the first year with an increase of \$300.00 annually for four years. Great difficulty was experienced in leasing this property due to its location not being readily accessible. Reorganization of this corporation has been delayed due to unstability of tenancy but is ready to be completed at this time. There are \$62,100 First Mortgage bonds outstanding but I have acquired \$18,900 of the bonds for the account of the Federal Facilities Realty Trust at a nominal cost. I have loaned funds to this corporation to pay taxes and operating expenses on which there is a balance due of \$600.00 which is to be paid from the current income.

United States Building Corporation owns the one story brick building located on 15th, 16th and Walnut Streets, St. Louis, Missouri which was originally erected in 1922 as a post office garage and was leased at an annual rental of \$35,750.00. Considerable difficulty was experienced in renting this property at the time the government vacated same but it is now leased to the Columbia Terminals Company for ten years running to May

31, 1946 at \$11,000.00 per annum, the following five years at \$12,500.00 per annum with an option for five additional years at \$15,000.00 per annum. In order to secure this tenant, it was necessary to expend \$26,629.35 for remodeling plus a real estate broker's commission of \$3,525.00. The plan of reorganization provided for setting aside a remodeling fund so that \$7,399.20 was applied toward the cost of said remodeling and the balance of \$22,755.15 was advanced for the Columbia Terminals Company which was to be deducted monthly at the rate of \$189.63. Shortly after the Columbia Terminals Company moved into our building one of their gasoline tanks exploded and caused a serious fire loss which was settled for \$25,386.71. It was not necessary to replace all of the items which had been destroyed so that \$2,565.36 was reserved for this fund and applied to the remodeling cost which together with a balance of \$1,273.39 of remodeling fund was remitted to the Columbia Terminals Company, thereby reducing the amount withheld monthly by approximately \$31.00. Since reorganization the First Mortgage bondholders have been paid interest at the rate of 5% per annum for the year 1938, 4% for 1939, 3½% for 1940 and 1½% for 1941, no interest on same having been paid between February 1, 1941 and February 1, 1943 when 1½% was distributed. The Second Mortgage bondholders have received 3% for 1938, 2½% for 1939, 2% for 1940 and 1% in 1941, no payment having been made since 1941. The First Mortgage bond issue has been reduced from \$156,100 to \$98,400. The Second Mortgage bond issue has been reduced from \$97,000 to \$63,100. All taxes are in current position.

South Side Post Office Service Building Corporation owns the one story brick garage located at 6141-51 South Wabash Avenue, Chicago, Illinois which was completed in 1926 and leased to the Post Office Department at an annual rental of \$8,750.00, said lease expiring December 4, 1936 when a new ten year lease was entered into at an annual rental of \$6,200.00, the later lease containing the usual ninety day cancellation clause in favor of the government. The reorganization in 1936 provided for extension of maturity of the bonds to August 1, 1950 and for reduction of interest from 6½% to 3% per annum non-cumulative which rate has been paid each six months up to and including August 1, 1943. The bond issue has been reduced from \$69,000 to \$29,900, of which the Feder-

al Facilities Realty Trust now owns \$6,200.00. All taxes are paid to date.

Twenty-Second Street Station Building Corporation owns the one and two story building located at 2211-19 South State Street, Chicago, Illinois, completed in 1922 for post office purposes and leased at an annual rental of \$20,000.00; lease provided for furnishing heat, light and water. The present lease on the premises entered into in 1931 for a period of ten years which contains the usual ninety day cancellation clause in favor of the government provides for an annual rental of \$7,800.00. It does not require furnishing heat, light and water. Reorganization of the company in 1936 resulted in the bonded indebtedness of the company being extended to December 1, 1950 and the interest rate being reduced from 6½% to 3% non-cumulative which rate has been paid each six months as due. Since reorganization this indebtedness has been reduced from \$128,000 to \$92,700 of which I have acquired \$18,500 of the bonds for the Federal Facilities Realty Trust at an average cost of \$22.00 per hundred and we are currently bidding 40 for same. All taxes on this property are in current position.

Villa Building Corporation owns the one story garage building located at 2366 East 69th Street, Chicago, Illinois having a frontage of 30 feet, a depth of 300 feet. This building was erected to service the South Shore Villa and has a capacity of approximately forty cars. Reorganization of this property completed in 1938 extended the maturity of the First and Second Mortgage for a period of fifteen years to August 1, 1953, interest to be paid at the rate of 3% per annum on the First Mortgage issue non-cumulative, balance of earnings to be used for retirement of bonds. The Second Mortgage bears interest at the rate of 3% per annum non-cumulative. Earnings have not been sufficient to permit interest being paid
27 on First Mortgage bonds due to reduction in service charge for automobiles as well as vacancies and increased operating expenses. All taxes are in current position. There has not been any reduction in the principal indebtedness of this corporation by the corporation but I acquired \$16,500 of the First Mortgage bonds at an average of \$6.56 per hundred, which bonds are presently held by the Federal Facilities Realty Trust.

FEDERAL FACILITIES REALTY TRUST - CHICAGO

PAUL E. BARNES, TRUSTEE

SUMMARY OF CASH DEBITES AND CREDITMENTS
PERIOD FROM JUNE 1, 1935 to AUGUST 11, 1935

EXHIBIT "B"

DEBITES:

Management charges to subsidiary companies	\$136,410.96	
Interest securities of subsidiary companies	25,542.34	
Excess of market value over cost of bonds delivered to sinking funds	4,894.84	
Expense adjustment from National Realty Trust	2,214.02	\$168,662.16

CREDITMENTS:

Net purchases of bonds of subsidiary companies:

	PAR VALUE	COST	
Chicago F.O. Serv. Bldg. Corp.			
1st Mtge.	\$14,000.00	\$ 3,765.00	
Columbus F.P. Bldg. Corp.			
1st Mtge.	7,700.00	5,155.50	
Station "B" Bldg. Corp.			
common stock	300 sh.	996.00	
Dallas Parcel Post Station, Inc.			
1st Mtge.	21,000.00	4,515.00	
2nd Mtge.	12,000.00	480.00	
Ferry Station Post Office, Inc.			
2nd Mtge.	\$2,200.00	868.50	
Irving Park F. O. Bldg. Corp.			
1st Mtge.	6,000.00	1,820.00	
2nd Mtge.	2,500.00	355.00	
McKinley Park Station Bldg. Corp.			
1st Mtge.	8,000.00	2,712.50	
North Western F.O. Bldg. Corp.			
1st Mtge.	6,500.00	1,075.00	
Quincy Station F.O. Bldg. Corp.			
2nd Mtge.	5,500.00	550.00	
Roseland Bldg. Corp. 1st Mtge.	18,900.00	1,651.50	
U.S. Bldg. Corp. (St. Louis)			
1st Mtge.	800.00	165.00	
2nd Mtge.	6,500.00	550.00	
South Side F.O. Serv. Bldg. Corp.			
1st Mtge.	6,200.00	2,255.00	
2nd St. Station Bldg. Corp.			
1st Mtge.	18,500.00	3,977.50	
Ville Bldg. Corp. 1st Mtge.	16,500.00	1,911.00	
Cash advances to subsidiary companies		35,610.00	31,804.55
Less repayments		11,540.00	4,020.00
Compensation insurance advance premium			48.90
Operating expenses:			
Office Salaries		63,120.70	
Trustee Salary		27,845.63	
Rent		9,501.20	
Stationery & Supplies & Sundry Office Expenses		5,165.77	
Federal Income Tax		4,056.07	
Address Audit		2,140.00	
Telephone and Telegraph		2,722.45	
Trustee's Bond premium		2,250.00	
Sundry Taxes		1,894.48	
Miscellaneous Expense		1,421.05	
Postage		504.93	
Interest Expense		579.11	
To Stacy Messer, Trustee & Petty Cash Ind. is			121,310.15
CASH BALANCE			11,540.00
			<u>168,662.16</u>

Jan
3931

FEDERAL FACILITIES REALTY TRUST

BALANCE SHEET
As at August 31, 1943.

EXHIBIT "C"

ASSETS**Cash**

Payroll and Petty Cash Funds		\$ 1,125.00	
Bank balance delivered to Stacy Messer, Trustee		<u>9,111.96</u>	\$ 10,498.96
Accounts Receivable - subsidiary companies			4,000.00
Notes Receivable - subsidiaries of National Realty Trust			56,900.00
Investment in stock of subsidiary companies			<u>3,779,857.90</u>
Bonds of subsidiary companies:	PAR	BOOK	
Chicago P.O. Serv. Bldg. Corp. 1st Mtge.	\$14,000.00	\$ 3,265.00	
Columbus Parcel Post Bldg. Corp.			
1st Mtge.	7,700.00	5,155.50	
Station "D" Bldg. Corp. common stock	312 sh.	2,196.00	
Dallas Parcel Post Station Inc.			
1st Mtge.	21,000.00	4,525.00	
2nd Mtge.	12,000.00	480.00	
Harry Station P.O., Inc.	2nd Mtge.	22,200.00	868.50
Irving Park P.O. Bldg. Corp.	1st Mtge.	6,000.00	1,820.00
2nd Mtge.	2,500.00	395.00	
McKinley Park Station Bldg. Corp.	1st Mtge.	6,000.00	2,712.50
North Elsted P.O. Bldg. Corp.	1st Mtge.	6,500.00	1,675.00
Quincy Station P.O. Bldg. Corp.	2nd Mtge.	5,500.00	550.00
Rockland Bldg. Corp.		15,900.00	1,651.50
U.S. Bldg. Corp.	1st Mtge.	900.00	265.00
2nd Mtge.	10,000.00	4,450.00	
South Side P.O. Serv. Bldg. Corp.	1st Mtge.	6,200.00	2,295.00
2nd St. Station Bldg. Corp.	1st Mtge.	22,000.00	7,477.50
Villa Garage		<u>16,500.00</u>	<u>1,011.00</u>

Deferred

40,164.95
11,744.91
1,904,755.62

LIABILITIES

Accounts Payable	15,095.62	
Jacob Ealy & Co.	3,170.06	
Paul E. Morrow, Chairman	<u>90,174.23</u>	108,443.91
Due to subsidiary companies	558,500.00	
Collateral Trust Bonds outstanding	<u>29,510.51</u>	587,710.51
Accrued interest to 77th date		
Not Worth		
Certificates of beneficial interest outstanding	1,000,000.00	
Capital surplus	2,274,462.64	
Surplus - operations of Trust		
Surplus - operations of Subsidiaries	<u>1.33</u>	<u>1,404,751.20</u>
		<u>1,904,755.62</u>

Note: The values herein are book values as taken from the accounts of the Trust and do not necessarily reflect actual values.
No provision is made for possible Federal income taxes.
The accounts "Investment in Stock of Subsidiaries" and "Surplus - Operations of Subsidiaries" reflect the status at December 31, 1942 as reports are only made annually.

EXHIBIT "D"

30

October 1, 1943

Hon. William H. Holly
United States District Court
Chicago, Illinois

In Re: Federal Facilities Realty Trust, Debtor

Dear Sir:

As trustee under appointment of this Court I took over the assets and control of the Federal Facilities Realty Trust and the National Realty Trust as of June 1, 1935. I also assumed responsibility for the management and operation of the twenty-seven subsidiaries.

The Federal Facilities Realty Trust owned the stock equity in fourteen real estate corporations and the National in thirteen. All had bonds outstanding with a claim prior to that of the equity. Both trusts owned bonds of the subsidiaries, as well as the stock, except in three where the National had a reversionary interest if the bonds were paid at maturity.

As Trustee for the two parent companies I became President of each of the subsidiaries.

My obligation as Trustee of the two parent companies was to so operate the subsidiaries that the value of the stock equity would increase.

My obligation as President of the subsidiaries was to the stockholders (the parent companies) but only as the claims of the bondholders were fairly protected could I perform my obligation to the stockholders.

I could have assumed the attitude that there was nothing for a Trustee to do but sit still and handle the properties to the best of his ability and allow money to accumulate and exercise no business judgment to increase the value of the property placed in his care. On the other hand I could use my best ability and that of my associates to have the property increase in value as I would have wished if I had personally owned these properties.

I preferred to do my best to increase the value of the properties and investments of all the security holders. I believe all interested in these properties have benefitted by this attitude.

I realized that no progress could be made toward my goal without the best assistance I could get and that only through the whole-hearted cooperation of all could this

progress be made. I retained the services of Mr. Jacob Kulp and Miss Myrtle Johnson who had organized the properties and were thoroughly acquainted with them and knew the great majority of the bondholders. I have had the finest cooperation and assistance from them and from the bondholders. I could not have found people who would have given me more willing and competent assistance and the success of the work of the last eight and one-half years has been due as much to them and my other associates as to me.

Our principal difficulty has been the change in policy of the Post Office Department who formerly rented many of our buildings. Shortly before I became trustee the Post Office Department entered on a policy of building for itself rather than renting. This resulted in fear 31 by those who had Post Office securities and in our inability to pay interest and meet maturities as they came due.

In consequence, it became necessary to reorganize twelve of the Federal and five of the National group of properties. In each of these reorganizations we were able to retain the equity ownership for the parent companies. Previous to this, six of the National had been reorganized without being able, in all instances, to retain the equity.

During this period we were able to pay approximately \$150,000 of back real estate taxes. All were paid out of earnings and all taxes are now paid as bills are rendered, except in Station "D" in which there are some special assessments still unpaid. Reorganization expenses also were paid from earnings. In no case did we make loans which would be liens prior to the liens of the bondholders.

During this period we have had improper income tax deficiency assessments of approximately \$200,000 which after many conferences and several trips to Washington we have been able to eliminate. All this has been handled with substantially no outside help or expense. This has been possible largely through the help of one of my associates—Mr. Claire M. Marquiss.

In June, 1935 there were \$7,611,700 bonds outstanding with a claim prior to that of the parent companies. In a few of the reorganizations stock of the same par value was given for bonds which were eliminated. There are outstanding today \$5,197,100 bonds and stock with a claim

prior to stock equity of the parent companies, a reduction of 34% of prior claims.

In June, 1935 the parent companies owned \$622,500 senior securities of the underlying companies while today they own \$1,070,600 senior securities, an increase of 72%. In no instance did the parent company buy securities of the underlying companies if they were able to buy them themselves and in many instances the parent companies loaned the subsidiaries the money to purchase for their own account.

During this period we bought \$262,800 par value of the underlying securities of the Federal group for the parent trust. The cost was \$31,864.55. On these securities the income to the parent company has been \$24,494.34 leaving the net cost \$7,370.21. The current yearly income is \$3,765.50 and at prices prevailing August 13, 1943 they were worth \$38,321.50.

During this period we bought \$175,000 par value of the underlying securities of the National group for the parent trust. The cost was \$47,469.25. On these securities the income to the parent company has been \$21,412.81 leaving the net cost \$26,056.44. The current yearly income is \$3,802.30 and at prices prevailing August 13, 1943 they were worth \$56,635.00.

Stated in another way—in June, 1935 the parent companies owned the subsidiaries subject to prior claims of \$6,989,200 and today they own substantially the same companies subject to prior claims of \$4,126,500. (each figure is after eliminating underlying securities owned by the parent trusts).

We have never urged people to sell their securities 32 to us or anyone else. In many instances it has been difficult to secure the money to purchase the securities that have been offered to us but we think our obligation to bondholders who wish to sell is as great as to those who wish to hold. I know that as a result of our willingness to buy, those security holders who wished to sell have been able to get a better price than if they would have had only a speculative market on which to depend.

During the last eight and one-half years the parent companies have loaned to the subsidiaries \$111,695.00 of which \$101,175.00 has been repaid, leaving a balance outstanding of \$10,520.00, on August 13, 1943. Since that, additional repayments of \$1,420.00 have been made, leav-

ing balances due of \$9,100.00 which should be repaid within the next six or eight months.

As the Court's representative, I have spent more than eight years supervising these properties. My associates and I have given our best abilities to handling these for the best interests of the security holders. I am proud of what we have accomplished.

This experience of eight years has given me information which I think should be of value to the Court and the representatives of the security holders. I realize that in the last analysis the credit for the success or the blame for the failure accrues to the Court as well as his representative. In the hope that my judgment may be useful I would suggest that the success of this operation is dependent on management, those who are daily in charge. Any interference with competent management will be disastrous and will mean loss to people who cannot afford to lose. Mistakes will be made, and if corrected, should be overlooked if the whole operation is good. Only those who lack experience will disagree.

Very truly yours,
Paul E. Darrow

PART 2. BUREAU, CHAIRMAN ACCOUNT

CASH RECEIPTS

JULY 1, 1935 to SEPTEMBER 30, 1935

From George E. Anderson, Executive
Interest earned
Payments from building accounts
Adjustments of items prior to July 1, 1935
Proceeds of bonds sold:

24,428.37
9,600.00
3,427.12
500.00

Austin Station Bldg. Corp.		
1st Bldg.	9,000.00	4,225.00
Chicago P.O. Bldg. Corp.		
Sec. 1	900.00	35.00
Chicago P.O. Sec. Bldg. Corp.		
1st Bldg.	6,000.00	2,775.00
2nd Bldg.	1,000.00	900.00
Columbus J. Bldg. Corp.	1,000.00	3,137.90
6748 Grand Ave. Bldg. Corp.	1,000.00	900.00
Dallas Parcel Post Station.		
1st Bldg.	7,500.00	2,400.00
2nd Bldg.	12,000.00	400.00
Division 6 LaFayette Bldg. Corp.		
Sec. 1	4,000.00	1,600.00
Sec. 2	1,000.00	900.00
Station 7th	12,000.00	6,600.00
Ferry Station Post Office.		
1st Bldg.	1,000.00	600.00
2nd Bldg.	50,900.00	3,096.79
Irving Park P.O. Bldg. Corp.		
1st Bldg.	900.00	900.00
Los Angeles Service Station		
1st Bldg.	10,300.00	2,625.00
Madison Park Station Bldg.		
Corp.	2,000.00	415.00
North Holston P.O. Bldg. Corp.	1,500.00	450.00
Ogden Park P.O. Bldg. Corp.	3,000.00	900.00
Quincy Station P.O. Bldg.		
Corp.	17,000.00	8,400.00
2nd Bldg.		210.00
U.S. Bldg. Corp. (St. Louis)		
2nd Bldg.	3,000.00	600.00
South Side P.O. Sec. Bldg.		
Corp.	900.00	275.00

31,022.00

TOTAL CASH RECEIPTS

60,933.77

EXHIBIT 70 - 1st page

PAUL E. BARRIS, CHAIRMAN ACCOUNT

COMPARATIVE STATEMENT OF ACCOUNTS PAID AND RECEIVABLE

	Accounts Payable 6-30-35	Accounts Receivable 6-30-35	Paid on Accounts Payable 7-30-35	Accounts Payable 7-30-35	Received on Accts. Receivable 7-30-35	Accounts Receivable 7-30-35
Federal Facilities Realty Tr.		3,170.06				3,170.06
Chicago P.O. Serv. Bldg. Corp.	5,006.40		1,115.17	3,890.23		
Columbus P.O. Bldg. Corp.	189.90		33.13	116.17		
Station "B" Bldg. Corp.		1,327.94				1,327.94
Ferry Station P.O., Inc.	21.00		4.68	16.32		
Irving Park P.O. Bldg. Corp.	996.99		222.19	774.60		
McKinley Park Station Bldg. Corp.	302.60		67.46	235.14		
North Halsted P.O. Bldg. Corp.		780.00			780.00	0.00
Quincy Station P.O. Bldg. Corp.	38,707.75		10,115.06	0.00		
Reoland Building Corp.	113.75		25.36	88.39		
U.S. Bldg. Corp. (St. Louis)	920.98		206.67	720.31		
South Side P.O. Serv. Bldg. Corp.	57.50		21.74	75.76		
27th St. Station Bldg. Corp.	1,604.05		402.23	1,401.86		
Villa Building Corp.		281.12			281.12	0.00
National Realty Trust		707.30				707.30
Archer Station Bldg. Corp.	1,404.03		330.87	1,153.16		
Austin Station Bldg. Corp.	6,905.62		1,535.69	5,365.93		
Europa P.O. Bldg. Corp.	270.20		60.25	210.01		
67th Grand Ave. Bldg. Corp.		8,328.12			924.11	7,404.01
Division & LaVergne Bldg. Corp.	15.00		3.30	11.66		
Postal Facilities, Inc.		2,985.18				2,985.18
Grand Rapids P.O. Bldg. Corp.		457.42			457.42	0.00
LaGrange P.O. Bldg. Corp.		281.25			281.25	0.00
Los Angeles Service Station Inc.		68.99			68.99	0.00
Ogden Park P.O. Bldg. Corp.	4,874.65		1,087.69	3,790.96		
Parkview Manor Bldg. Co.	8,906.91		2,003.61	6,983.30		
609 N. Clark St. Bldg. Corp.		8,900.00			386.43	8,113.57
Window Shade Bldg. Corp.		244.20			244.20	0.00
	70,726.63	27,128.78	23,240.34	24,833.60	3,417.12	23,707.66

Cash paid on Accounts Payable actually was

In addition \$2,000 Irving Park 2nd Bldg. bonds were given to issuer at

In addition \$8,100 Parkview 1st Bldg. bonds were given to issuer at

In addition \$10,900 U.S. Bldg. Corp. 2nd Bldg. bonds were given to issuer at

In consideration of cash payment Quincy Corp. cancelled balance

Balance Accounts Payable 7-30-35

20,007.87

222.19

2,003.61

802.67

23,240.34

22,692.69

23,811.60

70,726.63

INVENTORY**PAUL E. BARNOW, CHAIRMAN ACCOUNT**

	<u>Received</u> <u>6-1-35</u>	<u>On Hand</u> <u>2-10-35</u>
Austin Station Bldg. Corp. 1st Stgo.		4,000.00
2nd Stgo.	2,000.00	2,000.00
Division & LaVergne Bldg. Corp. Ser. A		500.00
Postal Facilities, Inc. 2nd Stgo.	3,000.00	3,200.00
Federal Facilities Realty Trust, Bonds	2,500.00	3,900.00
" " Declared value \$10.00		
Shares, No par	2,500.00	2,500.00
Grand Rapids P. O. Bldg. Corp. 2nd Stgo.	500.00	500.00
Irving Park P. O. Bldg. Corp. 2nd Stgo.	4,000.00	8,000.00
La Grange P. O. Bldg. Corp.		500.00
Los Angeles Service Station Inc.	1,500.00	
National Realty Trust \$25.00 Per Share	4,675.00	25,492.50
North Dakota P. O. Bldg. Corp.	500.00	500.00
Ogden Park P. O. Bldg. Corp.		500.00
Parkview Manor Building Co.		
1st Stgo. & Class A 1st.	900.00	12,500.00
2nd Stgo. & Class B 1st.	9,000.00	9,000.00
6329 E. Clark St. Bldg. Corp.		1,000.00
Rockland Bldg. Corp.		500.00
Windsor Shore Bldg. Corp.		0.00
TOTAL L.I.E. VALUE	31,075.00	77,992.50

EXHIBIT #1 - 4th page

37 And on, to wit, the 15th day of October, 1943, came the Trustee, Paul E. Darrow, by his attorneys and filed in the Clerk's office of said Court his certain Final Report And Account From December 1, 1940 to and Including August 13, 1943, And Including Request For Allowance of Additional Fees For Services Rendered As Such Trustee, in Case No. 58335 in words and figures following, to wit:

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IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58335) • •

FINAL REPORT AND ACCOUNT OF PAUL E.
DARROW, TRUSTEE, FROM DECEMBER, 1, 1940
TO AND INCLUDING AUGUST 13, 1943, AND IN-
CLUDING REQUEST FOR ALLOWANCE OF
ADDITIONAL FEES FOR SERVICES REN-
DERED AS SUCH TRUSTEE.

To the Honorable William H. Holly, Judge of said Court:
Now comes your Trustee, Paul E. Darrow, and respectfully represents as follows:

1. That on December 12, 1940 there was filed herein your Trustee's Report and Petition for Approval Thereof; that said report briefly summarized the history of the proceedings herein and the acts and doings of your Trustee in managing the business of the Debtor from May 24, 1935, the date of the approval of the petition of certain creditors herein, down to and inclusive of November 30, 1940; that said report fully outlined the scope of the duties of your Trustee as provided by orders of this Court, the management of the subsidiary corporations of the Debtor herein, and the problems arising therefrom and the progress of the reorganization of the subsidiary corporations up to that date.

2. That upon the filing of said Trustee's report and petition this Court set a hearing on such report and petition and any objections that might be filed thereto for December 30, 1940; that on December 30, 1940 the matter was continued to January 31, 1941 and that at that time Order Approving Trustee's Report was entered by this Court, providing as follows:

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"1. The Trustee's Report And Petition For Approval Thereof filed herein on December 12, 1940 by Paul E. Darrow, Permanent Trustee, be and the same is hereby approved.

"2. The statements entitled "Federal Facilities Realty Trust, National Realty Trust, and Their Subsidiary Corporations. Financial Statements As At May 31, 1935, August 17, 1935," and "National Realty Trust. Financial Statements As At May 24, 1935. August 30, 1935", prepared by Scovell, Wellington & Company and heretofore filed herein, be and the same are hereby approved as in compliance with orders of this Court heretofore entered herein, and said statements be and the same are hereby approved.

"3. The statement attached to the said Trustee's Report And Petition For Approval Thereof, marked Exhibit B, and entitled "National Realty Trust. Statement of Cash Account June 1, 1935 to November 30, 1940" be and the same is hereby approved as in compliance with the order of May 24, 1935 of this Court, and said statement be and the same is hereby approved.

"4. All acts of Paul E. Darrow as Trustee herein from the date of his appointment and qualification as Trustee on May 24, 1935 to and including November 30, 1940, be and the same are hereby approved."

3. In your "Trustee's Report And Petition For Approval Thereof" filed herein on December 12, 1940 your Trustee reported that he had continued the operation of the business of the Debtor which is a common law trust owning all or a portion of the equity in some thirteen subsidiary corporations; that reorganizations of these subsidiary corporations were required and at the time of the filing of the above report had been substantially completed; that a statement concerning the status of such reorganizations was attached to said report, marked Exhibit A, and was made a part thereof; that your Trustee now reports that all of said subsidiaries have been reorganized where necessary with the exception of the La-Grange Post Office Building Corporation, on which no action has been taken due to uncertainty of tenancy of the property; that attached hereto is a statement entitled "Summary Present Status Underlying Companies, National Realty Trust, Since Report Filed As Of November

30, 1940," marked Exhibit A and made a part hereof, which statement sets forth the status of said subsidiaries as of August 13, 1943.

40 4. That attached to the Trustee's Report And Petition For Approval Thereof filed herein on December 12, 1940, marked Exhibit B, and made a part thereof was a statement entitled "National Realty Trust. Statement Of Cash Account June 1, 1935 To November 30, 1940," setting forth in summary form your Trustee's conduct of the business of the Debtor for that period; that attached hereto marked Exhibit B is a statement entitled "Summary Of Cash Receipts And Disbursements For Period December 1, 1940 To August 13, 1943" showing all income received by your Trustee for said period, together with detailed statement of disbursements; further, that attached hereto, made a part hereof, and marked Exhibit C is a statement entitled "Summary Of Cash Receipts And Disbursements For Period June 1, 1935 To August 13, 1943," same being a consolidated statement of cash receipts and disbursements covering the entire period of the trusteeship of your Trustee; that your Trustee continued the practice, set forth by him in his previous report, of using surplus funds from time to time for the purchase of securities of subsidiary corporations of the Debtor; that the total amount of the securities of subsidiary corporations purchased by your Trustee as aforesaid amounted to a face value of \$175,000 and required the expenditure of \$47,469.25; that interest received on securities of subsidiaries purchased by your Trustee subsequent to his appointment totalled on August 13, 1943, \$21,412.81; that such securities at prices prevailing on August 13, 1943 had a value of \$56,635 and are producing an annual income as of August 13, 1943, of \$3,802.30, all of which is more fully explained in communication addressed to the Honorable William H. Holly, United States District Court, Chicago, Illinois, signed by Paul E. Darrow, dated October 1, 1943 marked Exhibit D, attached hereto, and made a part hereof.

5. That in the conduct of the Debtor's business as aforesaid your Trustee has made advances to subsidiary corporations where he deemed it advisable; that the present outstanding amount of such advances is \$6,500 as shown on Exhibit C hereto attached and made a part

41 hereof, which amount your Trustee expects to be repaid within a reasonable time.

6. The aforementioned Exhibit C sets forth in summary form your Trustee's conduct of the business of the Debtor over the entire period of your Trustee's management thereof from 1935 to 1943 inclusive; reference is here made to Exhibit B hereto attached and made a part hereof, which shows in greater detail particular receipts and expenditures for the period December 1, 1940 to August 13, 1943, which, together with the detail as set forth in Exhibit B attached and made a part of Trustee's Report and Petition For Approval Thereof heretofore filed herein on December 12, 1940, comprise a complete report of your Trustee's cash receipts and disbursements as summarized under statement marked Exhibit C, attached hereto and made a part hereof.

7. Attached hereto, marked Exhibit E, and made a part hereof is a document entitled "National Realty Trust, Balance Sheet As At August 13, 1943." This statement is from the books and records of the Debtor as taken over by your Trustee and does not reflect present values. Your Trustee presents it only for purposes of general information.

8. That the National Realty Trust was originally formed under a Declaration Of Trust dated July 2, 1930 by Jacob Kulp, Lee H. Kulp, and M. Johnson, who thereupon became the trustees of the said National Realty Trust; that on July 27, 1933 the said Jacob Kulp, Lee H. Kulp, and M. Johnson resigned as trustees and were succeeded by George H. Andresen and Harry R. Holden as trustees of said common law trust; that thereafter on December 20, 1939 the said George H. Andresen resigned as trustee, president, and treasurer of said trust and was succeeded by Paul E. Darrow, as Trustee herein, as Trustee, president, and treasurer of said trust, who has continued to act as such trustee, president, and treasurer

42 of said trust down to the date hereof; that the said Harry R. Holden on the same date resigned as trustee, vice-president and secretary of said trust and was succeeded by George Sullivan as trustee, vice-president, and secretary of said trust; that at the same time Max Levy was elected a trustee of said trust; and that the said George Sullivan and Max Levy have been acting as trustees of said trust along with said Darrow down to the

date hereof, but that all of said trustees have been inactive due to the trusteeship of Paul E. Darrow, your Trustee herein.

9. At various times, upon motion of the Securities and Exchange Commission, various provisions of Chapter X of the Bankruptcy Act have been by order of this Court applied to the within proceedings. For more complete information as to said provisions, reference is made to orders entered herein dated January 31, 1941 and August 5, 1943.

10. On January 19, 1942 an order was entered herein upon the application of the Securities and Exchange Commission appointing Frederick B. Andrews, an independent public accountant, and authorizing and directing him to make a thorough financial investigation and to report thereon to the Court with respect to certain matters as more fully outlined in said order; that on May 20, 1942 an order was entered herein modifying in certain particulars various provisions of the order of January 19, 1942; that thereafter said Frederick B. Andrews filed in the Court herein on the dates set forth below the following documents:

June 24, 1942—"Report on Certain Transactions in Securities Issued by the Debtor and Its Subsidiaries"

July 9, 1942—"Comparative Balance Sheets, December 31, 1941 and May 31, 1935, and Statements of Income and Surplus By Periods—From June 1, 1935 to December 31, 1941 (Per Books—Without Analysis or Adjustment) of the Debtor Herein and Its Subsidiaries"

August 5, 1942—"Report on Pay Roll Accounts, January 22, 1937 to December 31, 1941"

43 Your Trustee represents that said reports have been available to all parties in these proceedings.

11. That thereafter the said Frederick B. Andrews filed herein his petition for compensation for said work as authorized and directed in said orders of January 19, 1942 and May 20, 1942, requesting a total amount of compensation in the sum of \$9,893.95, of which \$4,859.05 related to the estate of Federal Facilities Realty Trust, companion Debtor in case No. 58334, and \$5,034 to the estate of the Debtor herein; that there has been paid on account of said services by the Debtor, pursuant to orders of this

Court, the amount of \$3,063.32 as shown in Exhibit B; that the balance of said sum, or the difference between the amount requested and the amount paid on account, amounting to the sum of \$1,980.68 has been questioned by your Trustee and is pending before this Court.

12. That at the time of the appointment of your Trustee herein, George H. Andresen and Harry R. Holden were Trustees of the Debtor herein and of Federal Facilities Realty Trust, heretofore referred to as companion proceeding; that George H. Andresen was chief executive of both trusts and of the subsidiary corporations of the respective trusts; that at the time of the appointment of your Trustee herein there was in the hands of said Andresen certain assets of both Trusts and various subsidiary corporations, consisting of \$15,419.69 in cash and various securities; that shortly after the appointment of your Trustee the said Andresen delivered said cash funds amounting to \$15,419.69 and said securities to your Trustee, as Trustee of Federal Facilities Realty Trust, companion proceeding as above set forth, and as Trustee of National Realty Trust, the Debtor herein; that since the receipt of said funds and securities from said Andresen your Trustee has managed said funds and said securities in a separate account entitled "Paul E. Darrow, Chairman Account"; that attached hereto and made a part hereof, marked Exhibit F, is a statement entitled "Paul E. Darrow, Chairman Account," showing all operations of Paul E. Darrow as Trustee herein in said account since receipt of said account down to and inclusive of September 30, 1943.

13. Shortly prior to August 10, 1943 your Trustee submitted in writing his resignation to the Honorable William H. Holly, Judge of said Court, as such Trustee, and this Court entered an order on August 10, 1943 appointing Stacy Mosser Successor Trustee; that said order fixed Mr. Mosser's bond as Successor Trustee in the sum of \$25,000, which bond was duly filed in this Court and approved by order dated August 11, 1943; that Mr. Mosser thereafter as of August 13, 1943 took possession of the property and assets of said Debtor as Successor Trustee and since said date has been managing and operating the business of the Debtor.

14. Attached hereto, marked Exhibit E, to which prior reference has been made, is a statement entitled "National

Realty Trust, Balance Sheet As At August 13, 1943," which shows cash on hand and in bank in the sum of \$4,379.02, together with various accounts and notes receivable, and together with bonds of subsidiary companies, all of which your Trustee Paul E. Darrow has turned over as of August 13, 1943 to Stacy Mosser, Successor Trustee herein.

15. That for the period beginning June 1, 1935 and ending July 31, 1943 your Trustee received on account compensation at the rate of \$500 per month, which payments, under orders within the proceedings herein and within the Federal Facilities Realty Trust proceeding dated July 26, 1935, were to be divided between the said Debtors in the proportion which the income of each Debtor from month to month bore to the combined income of both said Debtors in each month; that pursuant to said order of July 26, 1935 Paul E. Darrow, as Trustee herein, has received on account of said services as Trustee the total sum of \$21,569.34.

16. That in addition to the compensation received by him as above set forth, your Trustee has in the reorganization proceeding of Postal Facilities, Inc., by order of this Court in said proceeding, received \$3,000 for services rendered by him.

17. That, therefore, your Trustee has received on account of services rendered as Trustee of the Debtor total compensation as of August 13, 1943 amounting to the sum of \$24,569.34.

18. That the services of your Trustee have extended over the period of April 25, 1935 to August 13, 1943; that the National Realty Trust, Debtor herein, at the time the reorganization proceedings herein were filed, owned the stock equity in thirteen subsidiary real estate corporations, and also owned bonds of its various subsidiaries; that shortly after your Trustee became Trustee of the Debtor he caused himself to be elected President of each of the thirteen subsidiary companies, and during this entire period has acted as the chief executive officer of said subsidiaries; that most of the properties of the subsidiary companies consisted of buildings erected for postoffice utility and had originally been designed for postoffice purposes and leased to the Postoffice Department; that shortly before your Trustee was appointed the Postoffice Department changed its basic policy into one of erecting its own

buildings rather than that of leasing buildings; that in consequence of this policy it has been necessary during the above period for your Trustee to initiate or to assist in the reorganization of various properties of the subsidiaries; that during this period eight of the thirteen subsidiary corporations belonging to the National Realty Trust, Debtor herein, have been reorganized, and your Trustee was able substantially to retain the equity or controlling stock ownership for the parent company, the National Realty Trust, Debtor herein, subject to certain qualifications as contained in various plans of reorganization; that your Trustee's services have largely been concerned with management and also with problems of reorganization of the subsidiary companies, as above set forth; that during this period there also have been questions of income tax deficiency assessments which have been largely eliminated as a result of services rendered by your Trustee with substantially no additional expense to said subsidiary companies or to the Debtor herein, and which have resulted in substantial savings to the Debtor herein and its subsidiaries; that during said eight-year period from 1935 to 1943, your Trustee has devoted all of his time to his duties as Trustee of National Realty Trust, the Debtor herein, and as Trustee of Federal Facilities Realty Trust, companion common law trust, also under reorganization at the present time before this Court and numbered Case 58334; that your Trustee's services to the Debtor estate herein have been of great value to said estate in that the constructive programs and policies adopted by your Trustee have greatly enhanced the actual and potential value of the chief assets of said Debtor corporation, namely, the stock equities and bonds of the thirteen subsidiary companies; that attached hereto and marked Exhibit D is a communication signed by Paul E. Darrow, dated October 1, 1943 and addressed to the Honorable William H. Holly, United States District Court, Chicago, Illinois, which sets forth in summary form the beneficial services rendered to said Debtor estate by Paul E. Darrow as Trustee herein; that as above set forth your Trustee has heretofore received on account the sum of \$21,569.34 allowed to him by orders of this Court, and in addition thereto, has received the sum of \$3,000, allowed to him by order of this Court for his services in reorganizing Postal Facilities, Inc., one of the subsidiary cor-

47 porations of the Debtor herein; that your Trustee, in view of the time spent, services performed, and the results obtained in and about the reorganization proceedings herein covering a period in excess of eight years, believes that at this time the allowance by this Court of the sum of \$5,000 would represent a fair and reasonable final allowance to him as Trustee in payment of the balance of fees due him for the services performed herein.

19. That your Trustee by leave of Court first had and obtained, employed the firm of attorneys of Adams Nelson & Williamson as counsel to assist and advise him in the within proceedings; that said firm of attorneys has filed herein its petition seeking compensation for services rendered by it to your Trustees; that your Trustee recommends that a reasonable allowance be made to said firm of attorneys.

20. Your Trustee represents that he has in all matters throughout this proceeding followed the directions of this Honorable Court as given to him by orders of Court entered herein; that all of his acts as Trustee from the date of his appointment down to and including November 30, 1940 were set forth and contained in the Trustee's Report And Petition For Approval Thereof filed in this Court on December 12, 1940, and that thereafter an order was entered by this Court on January 31, 1941 approving said Trustee's Report And Petition For Approval Thereof and approving all acts of the said Paul E. Darrow, Trustee herein, from the date of his appointment and qualification as Trustee on May 24, 1935 down to and including November 30, 1940; and your Trustee requests that all his acts as Trustee herein from December 1, 1940 down to and including August 13, 1943 be approved by this Honorable Court.

Wherefore, your Trustee prays that an order may be entered herein:

48 1. Approving the statement hereto attached marked Exhibit B, entitled "Summary Of Cash Receipts And Disbursements For Period December 1, 1940 To August 13, 1943."

2. Approving the statement hereto attached marked Exhibit C, entitled "Summary Of Cash Receipts And Disbursements For Period June 1, 1935 to August 13, 1943."

3. Approving the statement hereto attached marked Exhibit F and entitled "Paul E. Darrow, Chairman Account."

4. Approving this Final Report and Account of Paul E. Darrow as Trustee, and all of his acts as Trustee herein, from December 1, 1940 down to and including August 13, 1943.

5. Fixing the amount of additional compensation due Paul E. Darrow, as Trustee herein, at this time.

6. Discharging him from any and all liability as Trustee herein and cancelling his bond.

7. Providing that Stacy Mosser, Successor Trustee herein, be required:

(a) To assume and agree to pay Paul E. Darrow, your Trustee, such additional sum as may be fixed and allowed at this time by this Court to Paul E. Darrow for services rendered as Trustee herein, as requested in this petition.

(b) To assume and pay to Adams Nelson & Williamson as attorneys for Paul E. Darrow, as Trustee herein, such sums as may be allowed by this Court for services rendered by them to Paul E. Darrow as Trustee, for the period commencing May 24, 1935 down to and inclusive of August 10, 1943 and for services rendered subsequent to August 10, 1943 involving the preparation and filing of the final report and account of Paul E. Darrow as Trustee, as required to be prepared and filed by the order dated August 10, 1943 appointing Stacy Mosser as Successor Trustee herein in lieu of Paul E. Darrow, Trustee resigned.

8. Granting your Trustee such other and further relief as to this Honorable Court shall seem meet.

Paul E. Darrow,

As Trustee of National Realty
Trust, a common law trust,
Debtor.

District of the United States }
State of Illinois, County of Cook } ss.

Paul E. Darrow, being first duly sworn, deposes and says that he formerly was the Trustee of National Realty Trust, a common law trust, Debtor in these proceedings; that he has read the foregoing Final Report and Account

and Petition by him subscribed; that he knows the contents thereof; and that the same is true.

Paul E. Darrow.

Subscribed and sworn to before me
this 15th day of October, 1943.

Agnes Stasio,

Notary Public.

(SEAL)

50

**IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division**

• • (Caption—No. 58335) • •

AFFIDAVIT OF TRUSTEE.

District of the United States }
State of Illinois, County of Cook } ss.

Paul E. Darrow, being first duly sworn, on oath deposes and says that he formerly was the Trustee of National Realty Trust, a common law trust, Debtor; that as such Trustee he performed services on behalf of said National Realty Trust; that no agreement has been made, directly or indirectly, and that no understanding exists for a division of fees between him and the Debtor, any creditor of the Debtor, the attorney of any of said parties, or with any other person.

Paul E. Darrow.

Subscribed and sworn to before me
this 15th day of October, 1943.

Agnes Stasio,

Notary Public.

(SEAL)

Exhibit "A"

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EXHIBIT A.

**SUMMARY PRESENT STATUS UNDERLYING
COMPANIES NATIONAL REALTY TRUST
SINCE REPORT FILED AS OF
NOVEMBER 30, 1940.**

Armour Station Building Corporation. The property is now rented at \$2,580.00 annually. Interest payments were resumed June 15, 1942 at the rate of 3% per annum on First Mortgage bonds and 2% per annum on Second Mortgage bonds. Since reorganization the First Mortgage issue has been reduced from \$55,000 to \$26,000 and the Second Mortgage issue from \$13,000 to \$3,000. All taxes are in current position.

Austin Station Building Corporation. Interest payments have been made continuously at 3% per annum on the First and Second Mortgage bond issues. The First Mortgage bond issue has been reduced from \$285,000 to \$235,000 including bonds held in the Treasury and the Second Mortgage bond issue from \$73,000 to \$53,000 including bonds held in Treasury. There is one store vacant at the present time. All taxes are in current position.

Berwyn Post Office Building Corporation. The post office department vacated the building and the entire premises are now rented at an annual rental of \$1,500 to February 28, 1944 and \$1,800.00 for the following year. The First Mortgage bond issue has been reduced from \$31,500 to \$13,500 of which First Mortgage bonds the National Realty Trust holds \$8,500. There has been no reduction in the Second Mortgage bond issue from \$10,000 but the National Realty Trust now owns \$9,000 of the Second Mortgage bonds. Interest payments are being made at the rate of 3% per annum on the First Mortgage bonds. All taxes are in current position.

6748 Crandon Avenue Building Corporation. The rental for the fiscal year ending July 31, 1943 was \$29,561.17 in addition to the corporation earning \$654.00 interest on Treasury bonds, making a total income of \$30,215.17. The expenses were \$15,324.50, leaving \$14,890.67 for interest and retirement of indebtedness. Outstanding First Mortgage bonds have been reduced from \$207,000 to \$178,400, including \$17,700 bonds held in Treasury. The property is fully rented and taxes are in current position.

Division & La Vergne Building Corporation. Interest is being paid at the rate of 5% per annum on First Mortgage bonds and 4% on Second Mortgage bonds. The First Mortgage issue has been reduced from \$93,600 to \$64,700 and the Second Mortgage from \$10,000 to \$1,500, including the Second Mortgage bonds held in the Treasury uncanceled. The property is fully rented at an annual rental of \$12,190 and taxes are in current position.

Grand Rapids Parcel Post Building Corporation. Interest is being paid at the rate of 4% per annum on First Mortgage bonds and 3% per annum on Second Mortgage bonds. Since reorganization, First Mortgage issue has been reduced from \$115,000 to \$72,500 and Second Mortgage issue from \$40,000 to \$39,500.

La Grange Post Office Building Corporation. This property is rented on a month to month basis of \$165.00 monthly and cash position has been increased to \$4,000. No reorganization of this loan has been worked out owing to uncertainty of tenancy. All taxes are in current position.

Los Angeles Service Station, Inc. This property is still rented to the Hertz Drive-it-yourself Stations, a new lease having been entered into for a period of five years from April 1, 1943 at an annual rental of \$10,800, an increase of \$1,800 annually. The First Mortgage bond issue has been reduced from \$107,050 to \$87,350. Interest is being paid at the rate of 3% per annum on the First Mortgage bonds. All taxes are in current position.

Ogden Park Post Office Building Corporation. The rental income of this property is somewhat lower due to vacancy of the store and office space, but 3% interest has been paid continuously on the First Mortgage bonds 53 and the bond issue has been reduced from \$173,100 to \$122,900. All taxes are in current position.

Parkview Manor Building Company. All real estate taxes have been paid in full and the property is fully rented. The annual gross income under present leases has been increased to \$55,620. Interest is being paid on the First Mortgage bonds at the rate of 4% per annum and in all likelihood earnings will soon permit distribution of dividends on Class "A" preferred stock. The First Mortgage bond issue has been reduced from \$285,000 to \$261,180 and the Class "A" preferred stock from \$190,000 to

\$174,000 including the First Mortgage bonds and Class "A" preferred stock held in the Treasury of the corporation.

Postal Facilities, Inc. Interest is being paid at the rate of $3\frac{1}{2}\%$ per annum on First Mortgage bonds and 1% on Second Mortgage bonds. The First Mortgage issue has been reduced from \$495,000 to \$307,500. There is no change in the outstanding Second Mortgage issue, \$190,000.

6929 North Clark Street Building Corporation. First Mortgage bond issue has been reduced from \$271,200 to \$226,700 including bonds held in Treasury. The bond issue matured August 1, 1943 but has been extended to August 1, 1948 as necessary consents were received from the holders of more than two-thirds of the outstanding bonds which permitted such extension in accordance with terms of Trust Indenture securing same.

Windsor Shore Building Corporation. The annual income of this property for the fiscal year ending July 31, 1943 was \$19,329.10 including \$975.00 interest earned on Treasury bonds. The First Mortgage bond issue has been reduced from \$182,000 to \$143,100 including the bonds held in Treasury uncanceled. Interest is being paid at the rate of 3% per annum. The First Mortgage bonds expire January 1, 1944 and consents have been received from the holders of more than two-thirds of the outstanding bonds which will permit the maturity date to be extended to January 1, 1949 in accordance with terms of Trust Indenture securing same. All taxes are in current position.

Exhibit "B"

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EXHIBIT "B"

NATIONAL REALTY TRUST — CHICAGO PAUL E. DARROW, TRUSTEE

SUMMARY OF CASH RECEIPTS & DISBURSEMENTS FOR PERIOD DECEMBER 1, 1940 to AUGUST 13, 1943.

RECEIPTS:

Cash balance report of November 30, 1940	\$ 2,685.96
Management charges to subsidiary companies	32,150.88
Interest earned	28,122.78
TOTAL CASH RECEIPTS	\$62,959.62

DISBURSEMENTS:

Bonds of subsidiary companies:			
	Par Value	Cost	
Austin Station Bldg. Corp.			
1st Mtge	\$10,200.00	\$ 5,105.00	
2nd Mtge.	4,000.00	1,530.00	
Berwyn P. O. Bldg. Corp.			
Ser. A	2,500.00	875.00	
Ser. B	6,500.00	1,825.00	
Division & LaVergne Bldg. Corp.			
Ser. A	2,500.00	1,250.00	
La Grange P. O. Bldg. Corp.			
1st Mtge.	6,500.00	650.00	
Ogden Park P. O. Bldg. Corp.			
1st Mtge.	2,300.00	590.00	
6929 N. Clark St. Bldg. Corp.			
1st Mtge.	3,000.00	1,110.00	
Windsor Shore Bldg. Corp.			
1st Mtge.	1,000.00	350.00	\$13,085.00
Advance to subsidiary companies			2,000.00
Operating Expenses:			
Office Salaries		19,518.43	
Trustee Salary		8,715.00	
Federal Income Tax		3,177.65	
Andrews Audit		3,053.32	
Rent		2,561.00	
Expense adjustment with Federal			
Facilities Realty Trust		2,214.02	
Stationery & Supplies & Office Expense		1,222.45	
Telephone and Telegraph		811.48	
Trustee Bond Premium		750.00	
Taxes		652.55	
Postage		454.61	
Sundry expense		365.09	43,495.60
			58,580.60
Stacy Mosser, Successor Trustee—check		3,254.02	4,379.02
Payroll and petty cash funds		1,125.00	4,379.02
CASH BALANCE—AUGUST 13, 1943			None

Exhibit "C"

EXHIBIT "C"

NATIONAL REALTY TRUST
PAUL E. DARROW, TRUSTEESUMMARY OF CASH RECEIPTS & DISBURSEMENTS FOR PERIOD
JUNE 1, 1935 to AUGUST 13, 1943.

RECEIPTS:

Cash on hand June 1, 1935
Management charges to subsidiary companies
Interest Income

\$ 0.00
\$6,033.00
63,104.26

TOTAL CASH RECEIPTS

\$161,137.26

DISBURSEMENTS

	Par Value	Cost
Austin Station Bldg. Corp.	\$24,300.00	\$11,543.50
1st Mtge.	5,000.00	1,730.00
2nd Mtge.		
Berwyn P. O. Bldg. Corp.	8,500.00	2,130.00
Ser. A	7,000.00	1,660.00
Ser. B		
Division & LaVergne Bldg. Corp.	15,500.00	7,300.00
Ser. A	21,500.00	11,093.75
Station "F" 1st Mtge.	3,600.00	465.00
2nd Mtge.		
Grand Rapids P. P. Bldg. Corp.	3,000.00	1,500.00
1st Mtge.	1,500.00	307.50
2nd Mtge.	14,000.00	1,137.50
La Grange P. O. Bldg. Corp.	2,300.00	130.00
Ogden Park P. O. Bldg. Corp.		
Parkview Manor Bldg. Co.	17,700.00	3,245.00
1st Mtge.	34,900.00	1,217.00
2nd Mtge.	1,000.00	250.00
1748 Crandon Ave. Bldg. Corp.	3,500.00	1,235.00
1929 N. Clark St. Bldg. Corp.	12,000.00	2,525.00
Windsor Shore Bldg. Corp.		

\$47,469.25

Net advances to buildings unpaid balance
Operating Expenses

6,500.00
102,788.99

156,758.24

Cash on hand August 13, 1943
Payroll & Petty Cash
Stacy Mosser, Successor Trustee, check

1,125.00

3,254.92

4,379.92

4,379.02

EXHIBIT "D"

October 1, 1943.

Hon. William H. Holly
United States District Court
Chicago, Illinois

In Re: National Realty Trust, Debtor

Dear Sir:

As trustee under appointment of this Court I took over the assets and control of the Federal Facilities Realty Trust and the National Realty Trust as of June 1, 1935. I also assumed responsibility for the management and operation of the twenty-seven subsidiaries.

The Federal Facilities Realty Trust owned the stock equity in fourteen real estate corporations and the National in thirteen. All had bonds outstanding with a claim prior to that of the equity. Both trusts owned bonds of the subsidiaries, as well as the stock, except in three where the National had a reversionary interest if the bonds were paid at maturity.

As Trustee for the two parent companies I became President of each of the subsidiaries.

My obligation as Trustee of the two parent companies was to so operate the subsidiaries that the value of the stock equity would increase.

My obligation as President of the subsidiaries was to the stockholders (the parent companies) but only as the claims of the bondholders were fairly protected could I perform my obligation to the stockholders.

I could have assumed the attitude that there was nothing for a Trustee to do but sit still and handle the properties to the best of his ability and allow money to accumulate and exercise no business judgment to increase the value of the property placed in his care. On the other hand I could use my best ability and that of my associates to have the property increase in value as I would have wished if I had personally owned these properties.

I preferred to do my best to increase the value of the properties and investments of all the security holders. I believe all interested in these properties have benefitted by this attitude.

I realized that no progress could be made toward my goal without the best assistance I could get and that only

through the wholehearted cooperation of all could this progress be made. I retained the services of Mr. Jacob Kulp and Miss Myrtle Johnson who had organized the properties and were thoroughly acquainted with them and knew the great majority of the bondholders. I have had the finest cooperation and assistance from them and from the bondholders. I could not have found people who would have given me more willing and competent assistance and the success of the work of the last eight and one-half years has been due as much to them and my other associates as to me.

Our principal difficulty has been the change in policy of the Post Office Department who formerly rented many of our buildings. Shortly before I became trustee the Post Office Department entered on a policy of building for itself rather than renting. This resulted in fear by those
58 who had Post Office securities and in our inability to pay interest and meet maturities as they came due.

In consequence, it became necessary to reorganize twelve of the Federal and five of the National group of properties. In each of these reorganizations we were able to retain the equity ownership for the parent companies. Previous to this six of the National had been reorganized without being able, in all instances, to retain the equity.

During this period we were able to pay approximately \$150,000 of back real estate taxes. All were paid out of earnings and all taxes are now paid as bills are rendered, except in Station "D" in which there are some special assessments still unpaid. Reorganization expenses also were paid from earnings. In no case did we make loans which would be liens prior to the liens of the bondholders.

During this period we have had improper income tax deficiency assessments of approximately \$200,000 which after many conferences and several trips to Washington we have been able to eliminate. All this has been handled with substantially no outside help or expense. This has been possible largely through the help of one of my associates — Mr. Clair M. Marquiss.

In June, 1935 there were \$7,611,700 bonds outstanding with a claim prior to that of the parent companies. In a few of the reorganizations stock of the same par value was given for bonds which were eliminated. There are outstanding today \$5,197,100 bonds and stock with a claim

prior to stock equity of the parent companies, a reduction of 34% of prior claims.

In June, 1935 the parent companies owned \$622,500 senior securities of the underlying companies while today they own \$1,070,600 senior securities, an increase of 72%. In no instance did the parent company buy securities of the underlying companies if they were able to buy them themselves and in many instances the parent companies loaned the subsidiaries the money to purchase for their own account.

During this period we bought \$262,800 par value of the underlying securities of the Federal group for the parent trust. The cost was \$31,864.55. On these securities the income to the parent company has been \$24,494.34 leaving the net cost \$7,370.21. The current yearly income is \$3,765.50 and at prices prevailing August 13, 1943 they were worth \$38,321.50.

During this period we bought \$175,000 par value of the underlying securities of the National group for the parent trust. The cost was \$47,469.25. On these securities the income to the parent company has been \$21,412.81 leaving the net cost \$26,056.44. The current yearly income is \$3,802.30 and at prices prevailing August 13, 1943 they were worth \$50,635.00.

Stated in another way—in June, 1935 the parent companies owned the subsidiaries subject to prior claims of \$6,989,200 and today they own substantially the same companies subject to prior claims of \$4,126,500 (each figure is after eliminating underlying securities owned by the parent trusts).

We have never urged people to sell their securities
59 to us or anyone else. In many instances it has been difficult to secure the money to purchase the securities that have been offered to us but we think our obligation to bondholders who wish to sell is as great as to those who wish to hold. I know that as a result of our willingness to buy, those security holders who wished to sell have been able to get a better price than if they would have had only a speculative market on which to depend.

During the last eight and one-half years the parent companies have loaned to the subsidiaries \$111,695.00 of which \$101,175.00 has been repaid, leaving a balance outstanding of \$10,520.00, on August 13, 1943. Since that,

additional repayments of \$1,420.00 have been made, leaving balances due of \$9,100.00 which should be repaid within the next six or eight months.

As the Court's representative, I have spent more than eight years supervising these properties. My associates and I have given our best abilities to handling these for the best interests of the security holders. I am proud of what we have accomplished.

This experience of eight years has given me information which I think should be of value to the Court and the representatives of the security holders. I realize that in the last analysis the credit for the success or the blame for the failure accrues to the Court as well as his representative. In the hope that my judgment may be useful I would suggest that the success of this operation is dependent on management, those who are daily in charge. Any interference with competent management will be disastrous and will mean loss to people who cannot afford to lose. Mistakes will be made, and if corrected, should be overlooked if the whole operation is good. Only those who lack experience will disagree.

Very truly yours,

/s/ Paul E. Darrow

Paul E. Darrow

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EXHIBIT "E"

**NATIONAL REALTY TRUST
BALANCE SHEET
As At August 13, 1943**

ASSETS

Cash			
Payroll and Petty Cash Funds		\$ 1,125.00	
Bank balance—delivered to Stacy Mosser Trustee		3,254.02	\$ 4,379.02
			<hr/>
Accounts receivable—subsidiary companies			6,500.00
Investment in stock of subsidiary companies			1,024,530.65
Bonds of subsidiary companies:			
	Par	Cost	
Austin Station Bldg. Corp.	1st Mtge. \$24,800.00	\$ 12,058.50	
" " " "	2nd Mtge. 6,000.00	2,730.00	
Berwyn P. O. Bldg. Corp.	Ser. A 8,500.00	2,130.00	
" " " "	Ser. B 9,000.00	3,660.00	
6748 Crandon Ave. Bldg. Corp.	1st Mtge. 45,100.00	44,350.00	
Division & LaVergne Bldg. Corp.	Ser. A 15,500.00	7,300.00	
Postal Facilities, Inc.	1st Mtge. 21,500.00	11,093.75	
" " " "	2nd Mtge. 87,400.00	84,265.00	
Grand Rapids Parcel Post Bldg. Corp.	1st Mtge. 3,000.00	1,500.00	
" " " "	2nd Mtge. 3,000.00	1,807.50	
La Grange P. O. Bldg. Corp.	1st Mtge. 14,500.00	1,637.50	
Ogden Park P. O. Bldg. Corp.	1st Mtge. 12,300.00	6,230.00	
Parkview Manor Bldg. Co.	1st Mtge. 41,760.00)		
Class A Stock	278.4 sh.)	55,145.00	
Class B Stock	3462 sh.)	312,517.00	
6929 N. Clark St. Bldg. Corp.	1st Mtge. 66,900.00	64,635.00	
Windsor Shore Bldg. Corp.	1st. Mtge. 66,200.00	55,975.00	667,034.25
			<hr/>

Deferred

79,375.77

1,781,819.69

LIABILITIES

Accounts Payable			
Jacob Kulp & Co.		\$ 47,373.39	
Paul E. Darrow, Chairman		707.30	\$ 48,080.69
			<hr/>

Net Worth

Shares of beneficial interest outstanding	1,165,912.50		
Capital Surplus	722,204.45		
Earned surplus—operations of Trust	42,333.87		
Earned Surplus—operations of subsidiaries	196,666.52		1,733,739.00
			<hr/>
			1,781,819.69
			<hr/>

Note: The values herein are book values as taken from the accounts of the Trust and do not necessarily reflect actual values. No provision is made for possible Federal Income Tax. The accounts "Investment in Stock of Subsidiaries" and "Surplus-operations of Subsidiaries" reflect the status at December 31, 1942 as reports are only made annually.

EXHIBIT "F" — 1st page

PAUL E. DARROW, CHAIRMAN ACCOUNT
CASH RECEIPTS

JULY 1, 1935 to SEPTEMBER 30, 1943

RECEIPTS:

From George H. Andresen, Trustee			14,458.37
Interest earned			9,609.50
Payments from building accounts			3,417.12
Adjustments of items prior to July 1, 1935			364.45
Proceeds of bonds sold:			
Austin Station Bldg. Corp.			
1st Mtge.	9,000.00	4,225.00	
Berwyn P. O. Bldg. Corp.			
Ser. B	500.00	35.00	
Chicago P. O. Serv. Bldg. Corp.			
1st Mtge.	6,000.00	2,235.00	
2nd Mtge.	3,000.00	900.00	
Columbus P. P. Bldg. Corp.	3,500.00	3,137.50	
6748 Crandon Ave. Bldg. Corp.	1,000.00	500.00	
Dallas Parcel Post Station, Inc.			
1st Mtge.	7,500.00	2,400.00	
2nd Mtge.	12,000.00	480.00	
Division & LaVergne Bldg. Corp.			
Ser. A	4,000.00	1,600.00	
Ser. B	3,000.00	900.00	
Station "F" 1st Mtge.	12,000.00	6,600.00	
Ferry Station Post Office, Inc.			
1st Mtge.	3,000.00	840.00	
2nd Mtge.	50,500.00	3,056.79	
Irving Park P. O. Bldg. Corp.			
1st Mtge.	500.00	300.00	
Los Angeles Service Station, Inc.	10,500.00	2,625.00	
McKinley Park Station Bldg. Corp.	2,000.00	415.00	
North Halsted P. O. Bldg. Corp.	1,500.00	450.00	
Ogden Park P. O. Bldg. Corp.	3,000.00	900.00	
Quincy Station P. O. Bldg. Corp.			
1st Mtge.	17,000.00	8,400.00	
2nd Mtge.	600.00	210.00	
U. S. Bldg. Corp. (St. Louis)			
2nd Mtge.	3,000.00	600.00	
South Side P. O. Ser. Bldg. Corp.	500.00	275.00	
			41,084.29

TOTAL CASH RECEIPTS

68,933.73

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EXHIBIT "F" — 2nd page

PAUL E. DARROW, CHAIRMAN ACCOUNT
CASH DISBURSEMENTS
JULY 1, 1935 to SEPTEMBER 30, 1943

DISBURSEMENTS:

Advances to Buildings		33,810.00	
Less repayments		<u>33,010.00</u>	800.00
Paid on Buildings Accounts			20,807.87
Income Tax Payments			1,544.17
Sundry Expenses			820.34
Bond Purchases:			
Austin Station Bldg. Corp.			
1st Mtge.	13,000.00	6,045.00	
Berwyn P. O. Bldg. Corp.			
Chicago P. O. Serv. Bldg Corp.			
Ser. B	500.00	35.00	
1st Mtge.	6,000.00	1,935.00	
2nd Mtge.	3,000.00	900.00	
Columbus P. P. Bldg. Corp.	3,500.00	3,002.50	
6748 Crandon Ave. Bldg. Corp.	1,000.00	250.00	
Dallas Parcel Post Station, Inc.			
1st Mtge.	7,500.00	2,362.50	
2nd Mtge.	12,000.00	907.50	
Division & LaVergne Bldg. Corp.			
Ser. A	4,500.00	2,475.00	
Ser. B	3,000.00	900.00	
Station "F" 1st Mtge.	12,000.00	5,490.00	
2nd Mtge.	200.00	30.00	
Ferry Station Post Office, Inc.			
1st Mtge.	3,000.00	610.00	
2nd Mtge.	50,500.00	2,809.06	
Irving Park P. O. Bldg. Corp.			
1st Mtge.	500.00	205.00	
LaGrange P. O. Bldg. Corp.	500.00	50.00	
Los Angeles Service Station Inc.	9,000.00	720.00	
McKinley Park Station Bldg. Corp.	2,000.00	415.00	
North Halsted P. O. Bldg. Corp.	1,500.00	441.00	
Ogden Park P. O. Bldg. Corp.	3,500.00	405.00	
Parkview Manor Bldg. Co.			
1st Mtge.	20,100.00	3,441.00	
Quincy Station P. O. Bldg. Corp.			
1st Mtge.	17,000.00	6,637.50	
2nd Mtge.	600.00	125.00	
6929 N. Clark St. Bldg. Corp.	1,000.00	300.00	
Roseland Bldg. Corp.	500.00	50.00	
U. S. Bldg. Corp. (St. Louis)			
2nd Mtge.	13,500.00	810.00	
South Side P. O. Ser. Bldg. Corp.	500.00	200.00	
Windsor Shore Bldg. Corp.	9,400.00	1,880.00	
Federal Facilities Realty Trust	1,000.00	10.00	
National Realty Trust	8,327.50	<u>1,185.75</u>	44,630.81
Paid to Stacy C. Mosser, Successor			<u>330.54</u>

TOTAL CASH DISBURSEMENTS

68,933.73

PAUL E. DARROW, CHAIRMAN ACCOUNT
COMPARATIVE STATEMENT OF ACCOUNTS
PAYABLE & RECEIVABLE

	Accounts Payable 6-1-35	Accounts Receivable 6-1-35	Paid on Accounts Payable	Accounts Payable 9-30-43	Received On Accta. Receivable	Accounts Receivable 9-30-43
Federal Facilities Realty Tr.		3,170.06				3,170.06
Chicago P. O. Serv. Bldg. Corp.	5,006.40		1,116.17	3,890.23		
Columbus P. P. Bldg. Corp.	149.50		33.33	116.17		
Station "D" Bldg. Corp.		1,327.54				1,327.54
Ferry Station P. O., Inc.	21.00		4.68	16.32		
Irving Park P. O. Bldg. Corp.	996.59		222.19	774.40		
McKinley Park Station Bldg. Corp.	302.60		67.46	235.14		
North Halsted P. O. Bldg. Corp.		780.00			780.00	0.00
Quincy Station P. O. Bldg. Corp.	38,767.75		16,115.06	0.00		
Roseland Building Corp.	113.75		25.36	88.39		
U. S. Bldg. Corp. (St. Louis)	926.98		206.67	720.31		
South Side P. O. Ser. Bldg. Corp.	97.50		21.74	75.76		
22nd St. Station Bldg. Corp.	1,804.09		402.23	1,401.86		
Villa Building Corp.		281.12			281.12	0.00
National Realty Trust		707.30				707.30
Armour Station Bldg. Corp.	1,484.03		330.87	1,153.16		
Austin Station Bldg. Corp.	6,905.62		1,539.69	5,365.93		
Berwyn P. O. Bldg. Corp.	270.26		60.25	210.01		
6748 Crandon Ave. Bldg. Corp.		3,328.12			924.11	7,404.01
Division & LaVergne Bldg. Corp.	15.00		3.34	11.66		
Postal Facilities, Inc.		2,985.18				2,985.18
Grand Rapids P. P. Bldg. Corp.		457.42			457.42	0.00
LaGrange P. O. Bldg. Corp.		281.25			21.25	0.00
Los Angeles Service Station Inc.		62.59			62.59	0.00
Ogden Park P. O. Bldg. Corp.	4,878.65		1,087.69	3,790.96		
Parkview Manor Bldg. Co.	8,986.91		2,003.61	6,983.30		
6929 N. Clark St. Bldg. Corp.		3,500.00			386.43	3,113.57
Windsor Shore Bldg. Corp.		244.20			244.20	0.00
	70,726.63	27,124.78	23,240.34	24,833.60	3,417.12	23,707.66
Cash paid on Accounts Payable actually was						20,807.87
In addition \$2,000 Irving Park 2nd Mtge. bonds were given to issuer at						222.19
In addition \$8,000 Parkview 1st Mtge. bonds were given to issuer at						2,003.61
In addition \$10,500 U. S. Bldg. Corp. 2nd Mtge. bonds were given to issuer at						206.67
						23,240.34
In consideration of cash payment Quincy Corp. cancelled balance						22,652.69
Balance Accounts Payable 9-30-43						24,833.60
						70,726.63

EXHIBIT "F" — 4th page

INVENTORY

PAUL E. DARROW, CHAIRMAN ACCOUNT

	Par Value	
	Received 6-1-35	On Hand 9-30-43
Austin Station Bldg. Corp. 1st Mtge.		4,000.00
2nd Mtge.	2,000.00	2,000.00
Division & LaVergne Bldg. Corp. Ser A.		500.00
Postal Facilities, Inc. 2nd Mtge.	3,000.00	3,200.00
Federal Facilities Realty Trust, Bonds	2,500.00	3,500.00
" " Declared value \$10.00		
Shares, No par	2,500.00	2,500.00
Grand Rapids P. P. Bldg. Corp. 2nd Mtge.	500.00	500.00
Irving Park P. O. Bldg. Corp. 2nd Mtge.	4,000.00	2,000.00
La Grange P. O. Bldg. Corp.		500.00
Los Angeles Service Station Inc.	1,500.00	
National Realty Trust \$25.00 Per Shares	4,675.00	25,492.50
North Halsted P. O. Bldg. Corp.	500.00	500.00
Ogden Park P. O. Bldg. Corp.		500.00
Parkview Manor Building Co.		
1st Mtge. & Class A Pfd.	900.00	12,900.00
2nd Mtge. & Class B Pfd.	9,000.00	9,000.00
6929 N. Clark St. Bldg. Corp.		1,000.00
Roseland Bldg. Corp.		500.00
Windsor Shore Bldg. Corp.		9,400.00
TOTAL PAR VALUE	31,075.00	77,992.50

65 And afterwards on, to wit, the 9th day of December, 1943 came the Trustee, Paul E. Darrow by his attorneys and filed in the Clerk's office of said Court his certain Supplemental Affidavit To Accompany Final Report And Account, etc. in cause No. 58334, in words and figures following, to wit:

66

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

(Caption—No. 58334)

SUPPLEMENTAL AFFIDAVIT OF PAUL E. DARROW, FORMER TRUSTEE OF THE DEBTOR HEREIN, TO ACCOMPANY FINAL REPORT AND ACCOUNT OF PAUL E. DARROW, TRUSTEE, INCLUDING REQUEST OF SAID DARROW, AS TRUSTEE, FOR ALLOWANCE OF ADDITIONAL FEES HERETOFORE FILED IN THESE PROCEEDINGS ON OCTOBER 15, 1943.

District of the United States)
State of Illinois) ss.
County of Cook)

Paul E. Darrow, being first duly sworn, on oath deposes and says that he formerly was the Trustee of Federal Facilities Realty Trust, a common law trust, Debtor herein; that on October 13, 1943, he filed herein his Final Report and Account as Trustee, including his request as Trustee for allowance of additional fees for services rendered by him; that he files this Supplemental Affidavit to accompany said Final Report and Account as Trustee, including his request for allowance of additional fees, pursuant to Section 249, Article XIII, Chapter X of the Bankruptcy Laws of 1938; that he has not acquired or had transferred to him or for his account either before or after the commencement of the proceedings herein any claim against or bonds or stock of the debtor or any beneficial interest, direct or indirect, of the debtor with exceptions hereinafter noted; that he has acquired after the commencement of these proceedings in his own name for the use and benefit of the debtor herein or for the ultimate use and benefit of the wholly owned or affiliated

67 subsidiaries of the debtor securities as hereinafter listed which the debtor or its subsidiary companies were unable to purchase at the time he acquired same—said securities later having been sold to the debtor at cost to him as shown in said schedule:

Date Purchased			Date Sold	
10-30-35				
Graham & Co.	\$5,000.00	Quincy 2nd	\$1,012.50	9- 9-37
	5,000.00	22nd Street	1,012.50	5- 5-36
11-12-35				
Custin & Co.	1,500.00	Irving Park	195.00	11-12-35
	5,000.00	North Halsted	625.00	10-16-37
	3,000.00	Quincy 2nd	300.00	10- 6-37
	4,500.00	Quincy 2nd	450.00	7-15-38
	4,000.00	Quincy 2nd	400.00	10-11-38
	3,000.00	Roseland	255.00	5-22-37
	600.00	South Side P. O.	90.00	7-15-38
	6,000.00	22nd Street	780.00	7-15-38
	10,500.00	Villa Building	682.50	5-22-37

All of the above bonds were sold to the Federal Facilities Realty Trust at the cost price.

Among the securities involved in the various transactions during the time of his trusteeship he also acquired \$84,000 par value of the collateral trust bonds issued by Federal Facilities Realty Trust. These bonds are in his possession and were received free of cost. Their disposition seems to be a matter for direction of the Court. His intention has been eventually to deliver them to the Federal Facilities Realty Trust for cancellation. The said bonds were part of the \$250,000 bought by Jacob Kulp & Company at the time of issue and were held, together with other bonds, as collateral to a note of Jacob Kulp & Company to the First National Bank of Chicago. The bank reduced the collateral to possession and offered it to the Colonial Securities Company for the aggregate sum of \$12,000.00.

68 He was advised of the offer and after computing the fair value of the underlying bonds he indicated his willingness to buy these underlying bonds for \$12,000.00 if the Federal Facilities bonds would be delivered to him free. Inasmuch as neither the trust nor the underlying companies were in a position at that time to purchase all of the securities he agreed to take them up in installments as funds became available. Accord-

Supplemental Affidavit of Paul E. Darrow

ingly, the Colonial Securities Company entered into an agreement with the bank to purchase these bonds over an extended period. He made payments to it totalling \$12,000.00 during the period from November, 1936 to March, 1937, and received bonds as follows:

	Cost	Bought & Paid for By
\$1,000 Armour Station Bldg. Corp. 1st Mtge.	\$ 250.00	Armour Station Bldg. Corp.
4,000 Austin Station Bldg. Corp. 1st Mtge.	2,040.00	National Realty Trust
3,500 Austin Station Bldg. Corp. 1st Mtge.	1,785.00	Paul E. Darrow, Chairman
6,000 Division & La Vergne Bldg. Corp. Series "A" 1st Mtge.	3,300.00	National Realty Trust
4,000 Division & La Vergne Bldg. Corp. Series "A"	2,200.00	Paul E. Darrow, Chairman
3,000 Ogden Park Post Office Bldg. Corp.	300.00	Paul E. Darrow, Chairman
3,500 Parkview Manor Bldg. Co. 1st Mtge.	875.00	National Realty Trust
1,000 6929 N. Clark St. Bldg. Corp.	250.00	6929 N. Clark St. Bldg. Corp.
3,500 United States Bldg. Corp. 2nd Mtge.	350.00	Federal Facilities Realty Tr.
1,500 22nd St. Station Bldg. Corp.	450.00	22nd St. Station Bldg. Corp.
2,000 Villa Building Corp.	200.00	Federal Facilities Realty Tr.
	<hr/> \$12,000.00	

Upon final payment he received all of the \$84,000 bonds of the Federal Facilities Realty Trust hereinbefore referred to.

In so far as he knows, there are the only individual transactions. If there were any other transactions, same were handled without profit to said Paul E. Darrow.

Paul E. Darrow,
Formerly Trustee of Federal Facilities
Realty Trust, a common law trust.

Subscribed and Sworn To before me this 17th day of
November, 1943.

(Seal)

C. M. Marquiss
Notary Public

69 And afterwards on, to wit, the 9th day of December, 1943 came the Trustee, Paul E. Darrow by his attorneys and filed in the Clerk's office of said Court his certain Supplemental Affidavit To Accompany Final Report And Account Of Paul E. Darrow, Trustee, etc., in Case No. 58335 in words and figures following, to wit:

70

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

* * (Caption—No. 58335) * *

SUPPLEMENTAL AFFIDAVIT OF PAUL E. DARROW, FORMER TRUSTEE OF THE DEBTOR HEREIN, TO ACCOMPANY FINAL REPORT AND ACCOUNT OF PAUL E. DARROW, TRUSTEE, INCLUDING REQUEST OF SAID DARROW, AS TRUSTEE, FOR ALLOWANCE OF ADDITIONAL FEES HERETOFORE FILED IN THESE PROCEEDINGS ON OCTOBER 15, 1943.

District of the United States)
State of Illinois) ss.
County of Cook)

Paul E. Darrow, being first duly sworn, on oath deposes and says that he formerly was the Trustee of National Realty Trust, a common law trust, Debtor herein; that on October 15, 1943, he filed herein his Final Report and Account as Trustee, including his request as Trustee for allowance of additional fees for services rendered by him; that he files this Supplemental Affidavit to accompany said Final Report and Account as Trustee, including his request for allowance of additional fees, pursuant to Section 249, Article XIII, Chapter X of the Bankruptcy Laws of 1938; that he has not acquired or had transferred to him or for his account either before or after the commencement of proceedings herein any claim against or bonds or stock of the debtor or any beneficial interest, direct or indirect, of the debtor with exceptions hereinafter noted; that he has acquired after the commencement of these proceedings in his own name for the use and benefit of the debtor herein or for the ultimate use

and benefit of the wholly owned or affiliated subsidiaries of the debtor securities as hereinafter listed which the debtor or its subsidiary companies were unable to purchase at the time he acquired same—said securities later having been sold to the debtor and the chairman account at cost to him as shown in said schedule:

Date Purchased				Date Sold
11-12-35				
Custin & Co.	\$ 1,000.00	La Grange	\$ 100.00	5- 6-36
	8,500.00	Los Angeles	680.00	7-15-38
	2,000.00	Ogden Park	240.00	5- 6-36
	5,000.00	Parkview 1st	500.00	10- 6-37
	12,000.00	Parkview 1st	1,440.00	7-15-38

All of the above bonds were sold to the National Realty Trust except \$12,000 Parkview 1st to the Chairman Account, all at the cost price.

Among the securities involved in the various transactions during the time of his trusteeship he also acquired \$84,000 par value of the collateral trust bonds issued by Federal Facilities Realty Trust. These bonds are in his possession and were received free of cost. Their disposition seems to be a matter for direction of the Court. His intention has been eventually to deliver them to the Federal Facilities Realty Trust for cancellation. The said bonds were part of the \$250,000 bought by Jacob Kulp & Company at the time of issue and were held, together with other bonds, as collateral to a note of Jacob Kulp & Company to the First National Bank of Chicago. The bank reduced the collateral to possession and offered it to the Colonial Securities Company for the aggregate sum of \$12,000.00.

He was advised of the offer and after computing the fair value of the underlying bonds he indicated his willingness to buy these underlying bonds for \$12,000.00 if the Federal Facilities Realty bonds would be delivered to him free. Inasmuch as neither the trust nor the underlying companies were in a position at that time to purchase all of the securities he agreed to take them up in installments as funds became available. Accordingly, the Colonial Securities Company entered into an agreement with the bank to purchase these bonds over an extended period. He made payments to it totalling \$12,000.00 during the period from November, 1936 to March, 1937, and received bonds as follows:

		Cost	Bought & Paid for By
\$1,000	Armour Station Bldg. Corp. 1st Mtge.	\$ 250.00	Armour Station Bldg. Corp.
4,000	Austin Station Bldg. Corp. 1st Mtge.	2,040.00	National Realty Trust
3,500	Austin Station Bldg. Corp. 1st Mtge.	1,785.00	Paul E. Darrow, Chairman
6,000	Division & LaVergne Bldg. Corp. Series "A" 1st Mtge.	3,300.00	National Realty Trust
4,000	Division & LaVergne Bldg. Corp. Series "A"	2,200.00	Paul E. Darrow, Chairman
3,000	Ogden Park Post Office Bldg. Corp.	300.00	Paul E. Darrow, Chairman
3,500	Parkview Manor Bldg. Co. 1st Mtge.	875.00	National Realty Trust
1,000	6929 N. Clark St. Bldg. Corp.	250.00	6929 N. Clark St. Bldg. Corp.
3,500	United States Bldg. Corp. 2nd Mtge.	350.00	Federal Facilities Realty Tr.
1,500	22nd St. Station Bldg. Corp.	450.00	22nd St. Station Bldg. Corp.
2,000	Villa Building Corp.	200.00	Federal Facilities Realty Tr.
		<hr/>	
		\$12,000.00	

Upon final payment he received all of the \$84,000 bonds of the Federal Facilities Realty Trust hereinabove referred to.

In so far as he knows, these are the only individual transactions. If there were any other transactions, same were handled without profit to said Paul E. Darrow.

Paul E. Darrow
Formerly Trustee of National Realty Trust, a common law trust.

Subscribed and Sworn To before me this 17th day of November, 1943.

(Seal)

C. M. Marquis
Notary Public

74 And afterwards, to wit, the 11th day of February, 1944 there was filed in the Clerk's office of said Court a certain Detailed Schedules Supplementing Final Report And Account of Paul E. Darrow, Trustee, filed Pursuant to Court Order Dated November 29, 1943, in Case No. 58334 in words and figures following, to wit:

1. Attached Schedule -
(check)

NO. 58334

**IN THE DISTRICT COURT OF
THE UNITED STATES FOR THE
NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION**



In the Matter of

**FEDERAL FACILITIZE REALTY
TRUST, a common law trust,
Debtor.**

**DETAILED MEMORIAL SUPPLE-
MENTING FINAL REPORT AND
ACCOUNT OF PAUL S. CARROLL,
TRUSTEE, FILED PURSUANT TO
COURT ORDER DATED NOVEMBER
29, 1943.**

**ADAMS, NELSON & WILLIAMSON
LAW OFFICES
22 SOUTH LA SALLE STREET
FRANKLIN SQUARE
CHICAGO**

FEDERAL FACILITIES REALTY TRUST
PAUL H. BARRON, TRUSTEE
SUMMARY OF CASH RECEIPTS & DISBURSEMENTS
PERIOD FROM JUNE 1, 1935 TO AUGUST 15, 1943

RECEIPTS

Management charges to subsidiary companies			
Schedule 1		\$136,410.96	
Interest on securities of subsidiary companies			
Schedule 2		25,542.34	
Excess of market value over cost of bonds sold to sinking funds	\$ 3,928.00		
Profit on bonds sold to others	506.94		
Schedule 3		4,494.94	\$166,448.14

DISBURSEMENTS

Net purchases of bonds of subsidiary companies			
Schedule 2		\$ 21,964.35	
Net cash advances to subsidiary companies			
Schedule 3		4,020.00	
Compensation insurance advance premium		608.90	
Salary accounts			
Trustee salary	\$27,329.82		
Office salaries	61,853.13	89,142.70	
Operating expenses	Schedule 4	20,565.62	
		156,949.68	
To Stacy Messer, Trustee and petty cash funds		10,486.86	166,448.14

CASH BALANCE

NONE

MANAGEMENT CHARGES TO SUBSIDIARY COMPANIES

June 1, 1936 to Dec. 31, 1942

Schedule 1.

NAME	1936 From June 1	1937	1938	1939
Chicago Post Office Service Bldg. Corp.	\$ 8,123.34	\$ 4,700.00	\$ 1,075.00	\$ 1,400.00
Columbus Parcel Post Bldg. Corp.	1,001.36	2,712.50	1,712.50	2,712.50
Station 3 Bldg. Corp.	100.00	32.50	97.50	32.50
Dallas Parcel Post Bldg. Inc.	1,707.04	1,805.07	1,807.00	1,807.00
Ferry Station Post Office, Inc.	1,704.04	2,700.00	2,700.00	2,700.00
Irving Park Post Office Bldg. Corp.	501.00	575.75	500.00	400.00
McKinley Park Station Bldg. Corp.	520.00	500.00	500.00	500.00
North Halsted Post Office Bldg. Corp.	510.75	575.00	510.75	500.00
Galaxy Station Post Office Bldg. Corp.	2,000.00	2,071.00	2,000.00	2,000.00
Cleveland Building Corp.	102.54	212.50	10.00	10.00
United States Building Corp.	510.00	1,000.00	1,000.00	1,000.00
South Side Post Office Service Bldg. Corp.	100.21	127.50	511.30	500.00
East St. Station Bldg. Corp.	575.00	471.00	500.00	500.00
Villa Building Corp.	410.41	500.00	500.00	500.00
TOTAL	\$15,670.01	\$17,000.07	\$15,300.07	\$15,300.07

1939	1940	1941	1942	1943 To August 15	Total
\$ 2,341.84	\$ 1,600.00	\$ 1,308.23	\$ 1,645.00	\$ 1,626.64	\$ 21,766.00
2,712.80	2,712.80	2,712.80	2,712.80	1,542.29	22,152.07
22.00	22.00	140.00	155.00	96.25	899.10
22.00	700.00	225.42	220.00	515.00	2,653.39
2,712.80	2,602.00	291.25	2,669.64	2,525.20	22,594.16
22.00	22.00	222.50	252.50	147.29	2,272.07
22.00	22.00	161.32	161.07	103.98	1,422.37
22.00	22.00	225.00	225.00	142.50	2,071.86
2,602.00	2,602.00	2,600.07	1,274.11	720.55	14,007.83
22.00	22.00	63.93	51.23	51.25	608.17
2,602.00	2,602.00	220.00	220.00	220.00	8,572.51
22.00	22.00	220.00	220.00	220.00	2,754.92
22.00	22.00	220.00	220.00	227.50	5,515.84
22.00	22.00	420.25	425.93	277.22	4,317.50
<u>22,766.00</u>	<u>2,712.80</u>	<u>2,712.80</u>	<u>12,645.00</u>	<u>6,556.45</u>	
				Total	<u>130,410.96</u>

REMARKS OF D.D. TO REAGAN AND STREET RAINING

JUNE 1, 1945 to JUNE 15, 1945

Page 2

		Total Paid Per	Residual Cost
Station 7 to 10th St. Bldg.	1st Flr	\$ 18,000.00	\$ 8,000.00
	2nd Flr	2,000.00	500.00
Station 10th St. Bldg.	1st Flr	18,700.00	10,000.00
Station 11. Bldg. Corp.	1st Flr	20,000.00	100.00
Station 12th St. Bldg.	1st Flr	21,000.00	4,500.00
	2nd Flr	12,000.00	400.00
City Station Post Office	1st Flr	23,000.00	8,000.00
	2nd Flr	22,000.00	500.00
Living Post Bldg. Corp.	1st Flr	6,000.00	1,000.00
	2nd Flr	2,000.00	500.00
Wainwright Post Station	1st Flr	6,000.00	2,700.00
Post Station 1st Flr	1st Flr	6,000.00	1,000.00
Wainwright Post Station	1st Flr	12,000.00	2,000.00
Wainwright Bldg. Corp.	1st Flr	11,000.00	1,000.00
W.D. Bldg. Corp.	1st Flr	2,000.00	500.00
	2nd Flr	6,000.00	500.00
South Side Post Office Bldg. Flr.	1st Flr	6,000.00	2,000.00
2nd St. Station Bldg.	1st Flr	19,000.00	2,000.00
Village Bldg. Corp.	1st Flr	16,000.00	1,000.00
			49,000.00

<u>Total Bond Sales</u>		<u>Profit on Sales</u>	<u>Cost of Sales</u>	<u>Net Purchases for Period</u>		<u>Total Interest</u>
<u>Net</u>	<u>Price</u>			<u>Net</u>	<u>Cost</u>	
14,800.00 ~	1,792.00 ~	-	1,792.00 ~	14,000.00	1,680.00 ~	1,680.00
1,000.00 ~	900.00 ~	-	900.00 ~	-	-	90.00
4,500.00 ~	6,000.00 ~	500.00 ~	2,350.00 ~	7,700.00 ~	6,100.00 ~	6,100.00
-	-	-	-	200 shares	200.00 ~	-
-	-	-	-	12,000.00 ~	6,000.00 ~	6,000.00
-	-	-	-	12,000.00 ~	600.00 ~	600.00
25,500.00 ~	7,375.00 ~	1,500.00 ~	2,082.75 ~	-	-	2,082.75
-	-	-	-	12,500.00 ~	900.00 ~	1,782.75
-	-	-	-	6,000.00 ~	1,800.00 ~	1,800.00
-	-	-	-	2,500.00 ~	250.00 ~	250.00
-	-	-	-	2,000.00 ~	2,712.50 ~	2,712.50
-	-	-	-	2,500.00 ~	1,075.00 ~	1,075.00
15,100.00 ~	6,425.00 ~	2,317.50 ~	2,117.50 ~	2,500.00 ~	800.00 ~	6,587.50
-	-	-	-	12,500.00 ~	1,850.00 ~	-
2,000.00 ~	800.00 ~	150.00 ~	640.00 ~	500.00 ~	150.00 ~	150.00
-	-	-	-	6,500.00 ~	800.00 ~	800.00
-	-	-	-	6,500.00 ~	1,000.00 ~	1,000.00
-	-	-	-	12,500.00 ~	2,977.50 ~	6,587.50
-	-	-	-	12,500.00	1,000.00	-
	<u>25,382.00</u>	<u>6,426.04</u>	<u>15,457.75</u>		<u>21,904.05</u>	

Interest on securities 25,382.00
Interest on advances to subsidiaries 414.24
Sundry minor items credited to interest 23.06
25,819.30

ADVANCE & SUBSIDIARY COMPANIES

Schedule 8

ADVANCE

DATE	NAME	AMOUNT
1-2-36	U.S. Bldg. Corp	700.00
4-27-36	Chgo. P.O. Serv. Sta	2,700.00
6-1-36	U.S. Bldg. Corp	200.00
7-14-36	Columbus Parcel Post Bldg	1,000.00
8-2-36	"	1,000.00
8-12-36	"	1,000.00
11-2-36	"	150.00
9-24-36	Chgo P.O. Serv. Sta.	1,000.00
9-25-36	"	500.00
9-3-36	U.S. Bldg. Corp.	1,000.00
10-6-36	Station 5 Bldg. Corp.	200.00
11-4-36	"	10.00
1-22-37	Columbus P.O. Bldg.	500.00
2-15-37	"	500.00
3-1-37	"	1,000.00
3-1-37	Sta. D. Bldg. Corp.	250.00
5-6-37	Columbus Parcel Post Bldg.	700.00
12-4-38	Sta. D. Bldg. Corp.	500.00
12-9-38	"	500.00
12-23-38	"	250.00
1-1-39	Wallingford P.O. Bldg. Corp	200.00
2-15-39	"	200.00
2-28-39	Stas St. Bldg. Corp.	150.00
3-15-39	Station 5 Bldg. Corp.	200.00
3-15-39	Columbus P.O. Bldg.	100.00
10-2-40	Wallingford Bldg. Corp	500.00
7-27-41	"	200.00
7-27-41	"	100.00
4-22-42	"	250.00
4-27-42	"	200.00
1-27-40	W. District P.O. Bldg. Corp	100.00
7-1-40	"	450.00
7-22-40	Illas Parcel Post Sta.	1,050.00
7-21-40	Sta. D. Bldg. Corp.	1,000.00
6-17-40	"	500.00
7-17-40	"	150.00
7-7-40	"	50.00
10-15-40	"	150.00

20,750.00

REPAYMENTS

DATE	AMOUNT
8-2-36	700.00
8-15-36	2,700.00
8-2-36	200.00
11-25-36	2,500.00
12-4-36	250.00
9-15-36	1,500.00
9-3-36	2,000.00
11-15-36	150.00
1-23-37	150.00
10-6-37	1,000.00
12-2-37	1,000.00
9-21-37	150.00
10-15-37	100.00
10-6-38	700.00
2-10-39	500.00
2-27-39	200.00
2-10-39	500.00
4-27-39	150.00
9-27-39	100.00
7-7-40	150.00
9-15-40	200.00
10-17-40	100.00
4-29-41	250.00
9-4-41	100.00
10-4-41	100.00
11-9-42	150.00
12-21-42	"
9-4-40	250.00
2-4-40	1,250.00
12-31-41	200.00
1-15-42	250.00
2-7-42	150.00
2-4-42	200.00
1-4-42	500.00
11-9-42	200.00
12-14-42	"
1-4-43	250.00

19,940.00

INTEREST

3.37

6.70

-

19.01

9.49

1.55

.70

1.42

25.15

13.89

.53

4.74

4.13

1.42

6.46

1.29

1.93

~~.89~~

20.00

31.62

10.50

6.74

150.26

380.78

25

Balance 8-12-45

(200.00)

520.00

ENTRANCES

DATE

2-1-40
2-1-40
7-1-40
1-1-40

Columbus Parcel Post Bldg.

McClary Park Sta. Bldg. Corp.

1-12-40

So. Halsted Park Bldg. Corp.

1-12-40

Dallas Parcel Post Bldg.

1-27-41

Columbus Parcel Post Bldg.

4-10-42

Ferry Station Post Office

1-22-42

North Halsted Park Bldg. Corp.

9-12-42

Columbus Parcel Post Bldg.

12-30-42

North Halsted Park Bldg. Corp.

1-12-43

So. Bldg. Corp.

12-4-43

12-14-43

Ferry Station Post Office

2-1-44

Columbus Parcel Post Bldg.

7-27-44

North Halsted Park Bldg. Corp.

1

10/10/1

11 11

10/10/1 10/10/1 10/10/1

10/10/1 10/10/1 10/10/1

10/10/1 10/10/1 10/10/1

FEDERAL RESERVE
JUNE 1, 1935 to AUGUST 15, 1945

Schedule 4

		1935	1936	1937	1938	1939	1940	1941	1942	1943	Total
		From June 1								To Aug 15	
THEIR SALARY											
Paul E. Harvey		\$ 3,800.00	\$ 4,400.00	\$ 5,202.97	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 60,412.97
Proportion Charged to Federal Facilities		2,282.25	4,000.00	3,978.90	3,800.00	3,800.00	3,800.00	3,800.00	3,800.00	3,875.00	37,399.95
Proportion Charged to National Trust		1,517.75	2,400.00	1,224.07	2,200.00	2,200.00	2,200.00	2,200.11	2,200.00	1,225.00	23,013.02
OTHER SALARIES											
John James Brando	Cashier	720.00	1,517.50	1,471.50	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	12.30	9,712.30
Elizabeth Auer Harvey	Stenographer	720.00	1,400.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00		7,100.00
Gertrude Johnson	Clerk	700.00	1,300.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	900.00	12,400.00
Myrtle Johnson	Office Manager	1,700.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	1,900.00	21,700.00
Carolyn Hays	Telephone Operator	840.00	1,800.00	170.00							1,710.00
G. M. Morgan	Auditor	1,400.00	3,517.50	3,500.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	1,900.00	24,300.00
Elmer Harvey	Stenographer			57.00							57.00
Martha Scott	Telephone Operator			520.00	1,170.00	1,500.00	600.00				3,800.00
Jack Hays	Building Manager			3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	24,000.00
Virginia Clark	Stenographer						600.00	1,500.00	570.00		2,670.00
Mary Barker	Stenographer								1,100.10	900.00	2,000.10
Edna Hays		24.00	100.00	51.00			60.00	27.00			212.00
Proportion Charged to Federal Facilities		3,995.00	11,517.50	13,148.50	15,400.00	15,400.00	14,570.75	13,807.00	13,047.50	7,875.00	112,400.00
Proportion Charged to National Trust		2,905.00	7,932.50	10,054.50	9,870.00	9,870.00	7,900.00	9,513.75	9,513.50	8,625.00	81,400.00
		1,090.00	3,775.00	3,047.43	6,180.00	6,001.00	6,667.75	4,294.25	7,400.00	4,951.50	30,999.99

STATE OF TEXAS

NAME	RESIDENCE	DATE	AMOUNT	TOTAL
JOHN A. SMITH	HOUSTON, TEXAS	1912	100.00	100.00
JAMES B. JONES	HOUSTON, TEXAS	1912	100.00	100.00
WILLIAM C. BROWN	HOUSTON, TEXAS	1912	100.00	100.00
EDWARD D. WHITE	HOUSTON, TEXAS	1912	100.00	100.00
CHARLES E. GREEN	HOUSTON, TEXAS	1912	100.00	100.00
FRANK F. BLACK	HOUSTON, TEXAS	1912	100.00	100.00
ALBERT G. GRAY	HOUSTON, TEXAS	1912	100.00	100.00
ROBERT H. HARRIS	HOUSTON, TEXAS	1912	100.00	100.00
GEORGE I. KING	HOUSTON, TEXAS	1912	100.00	100.00
HERBERT J. LEE	HOUSTON, TEXAS	1912	100.00	100.00
WALTER K. NELSON	HOUSTON, TEXAS	1912	100.00	100.00
CLAUDE L. SCOTT	HOUSTON, TEXAS	1912	100.00	100.00
ALVIN M. TAYLOR	HOUSTON, TEXAS	1912	100.00	100.00
ROY O. WATSON	HOUSTON, TEXAS	1912	100.00	100.00
BRUCE P. YOUNG	HOUSTON, TEXAS	1912	100.00	100.00
TOTAL			1,000.00	1,000.00

1940	1941	1942	1943 To Aug. 15	Total
1,185.00	885.27	817.00	885.00	3,567.27
887.04	888.63	832.78	880.59	3,079.04
678.88	881.20	807.88		4,068.07
		2,000.00	846.82	2,846.82
882.87	886.47	818.34	810.12	3,065.65
880.79	883.00	880.00	880.00	3,260.00
1.40				62.81
78.88	88.20	40.30	62.80	479.83
840.18	164.83	133.11	73.82	1,301.84
77.08	108.18	124.88	211.78	1,413.10
88.68	184.40	142.71	88.24	671.70
				479.19
<u>2,969.22</u>	<u>2,614.89</u>	<u>4,953.33</u>	<u>2,784.17</u>	<u>10,851.43</u>

CHICAGO POST OFFICE SERVICE BLDG. - 1ST FLOOR BUREAU

Schedule 2 A

<u>Date</u> <u>Received</u>	<u>Security</u> <u>No.</u>	<u>Per</u>	<u>Bought From</u>	<u>Cost</u>
11-6-38	M 740	11,000.00	Cole Sec. Co.	1,000.00
	M 741	1,000.00	" " "	100.00
	M 742	1,000.00	" " "	100.00
	D 15	300.00	" " "	100.00
1-6-39	M 708	1,000.00	" " "	100.00
11-6-38	M 389	1,000.00	S.L. Harrison & Co.	100.00
11-10-38	M 742	1,000.00	Nicholson & Co.	100.00
1-2-41	M 114	1,000.00	Harvin T. & S. Bank	100.00
1-1-41	M 851	1,000.00	Beggs & Tracy	100.00
	M 852	1,000.00	"	100.00
	M 853	1,000.00	"	100.00
	M 854	1,000.00	"	100.00
	M 855	1,000.00	"	100.00
1-1-41	M 120	1,000.00	Bank & Goodwin	100.00
1-1-41	M 745	1,000.00	Paul, Ross, & Co. of Chicago	100.00
1-17-41	M 1	1,000.00	Sills Travel & Hinton	100.00
	M 2	1,000.00	"	100.00
	M 3	1,000.00	"	100.00
1-1-41	M 115	1,000.00	Doyle McCann & Co.	100.00
		15,000.00		1,000.00
		6,500.00		1,740.00
		<u>14,000.00</u>		<u>3,260.00</u>

CHICAGO POST OFFICE SERVICE BUILDING-2nd FLOOR BUREAU

12-24-36	D 15	500.00	Mrs. Josephine Harvister	100.00
	D 21	500.00	"	100.00
12-10-38	M 25	1,000.00	Mrs. F. Harvister	100.00
	M 26	1,000.00	"	100.00
				100.00
				100.00
				<u>100.00</u>
				<u>100.00</u>

<u>Amount Paid</u>	<u>Date</u>	<u>Sold To</u>	<u>For</u>	<u>Price</u>
.76	3-15-36	Sinking Fund	1,000.00	105.00
.76	"	"	1,000.00	105.00
.77	"	"	1,000.00	105.00
.58	"	"	100.00	107.50
27.76	5-15-36	Sinking Fund	1,000.00	100.00

30.43

1,500.00

1,742.50

3-15-36	Sinking Fund	500.00	150.00
"	"	500.00	150.00
"	"	1,000.00	300.00
"	"	1,000.00	300.00
		<u>1,000.00</u>	<u>900.00</u>

7.11

7.2

15.63

Total Interest earned 64.76

Cont. Est.
1941

1941

6-1-47

11-1-47

6-1-48

11-1-48

6-1-49

11-1-49

1941

19.00

19.00
19.00

15.00
15.00

15.00
15.00

15.00
15.00

15.00
15.00

15.00
15.00

19.00

19.00

19.00

19.00

19.00

19.00

19.00

19.00

1941


19.00

5-1-80

11-1-60

11-11-68

11-1-11



11

1994

14

75.00

[illegible]

THE UNIVERSITY OF CHICAGO PRESS

220



1941-1942

C LINDEN PARCEL POST BLDG-1st MORTGAGE 3 RD

Schedule D

DATE PMT.	SECURITY NO.	PAY	BY FIRM	CASH	ACCUMULATED INTEREST P-ID
1-14-35	108	500.00	Wm. Ross	480.00	2.00
11-23-35	278	500.00	Cal. Sav. Co.	480.00	11.01
"	278	500.00	"	480.00	11.02
1-24-36	224	500.00	Cal. Sav. Co.	487.30	12.01
"	277	500.00	"	480.00	12.01
"	276	500.00	"	480.00	12.01
"	306	100.00	"	99.00	2.00
"	307	100.00	"	99.00	2.00
"	445	500.00	"	445.00	12.01
"	448	500.00	"	445.00	12.01
"	450	500.00	"	445.00	12.01
"	480	500.00	"	445.00	12.01
"	483	500.00	"	445.00	12.01
"	"	500.00	"	445.00	12.01
"	"	500.00	"	445.00	12.01
1-25-37	253	500.00	San. V. Turple	475.00	12.00
"	204	500.00	"	475.00	12.00
"	452	500.00	"	475.00	12.00
7-14-38	174	500.00	Wm. D. Chas.	412.50	
"	175	500.00	"	412.50	
1-1-39	172	500.00	"	412.50	1.01
"	204	500.00	"	400.00	2.02
1-15-40	210	500.00	Cal. Sav. Co.	462.50	12.36
"	211	500.00	"	462.50	12.36
"	212	500.00	"	462.50	12.37
"	213	500.00	"	462.50	12.37
"	214	500.00	"	462.50	12.37
"	215	500.00	"	462.50	12.37
"	216	500.00	"	462.50	12.37
		<u>12,700.00</u>		<u>10,480.50</u>	<u>309.48</u>
		<u>6,000.00</u>		<u>6,000.00</u>	
		<u>7,700.00</u>		<u>4,480.50</u>	

DATE SOLD	TO	PER	PAID PRICE	PROFIT	ACCUMULATED INTEREST RECEIVED
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6-30-37	Serial Maturity	\$ 500.00	\$ 500.00	\$ 50.00	
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		7-1-41				
1-3-42	Serial Maturity	500.00	500.00	57.50	\$ 10.00	
1-3-42	"	500.00	500.00	57.50	10.00	
1-3-42	"	500.00	500.00	57.50	10.00	
1-3-42	Serial Maturity	500.00	500.00	100.00		
7-5-42	Serial Maturity	500.00	500.00	57.50		
"	"	500.00	500.00	57.50		
"	"	500.00	500.00	57.50		
"	"	500.00	500.00	57.50		
"	"	500.00	500.00	57.50		
"	"	500.00	500.00	57.50		
"	"	500.00	500.00	57.50		
"	"	500.00	500.00	57.50		
		<u>1,000.00</u>	<u>1,000.00</u>	<u>575.00</u>		<u>50.00</u>

Total Interest earned \$ 4,475.57

[illegible]

[illegible]

STATION D BUILDING CORP.

6-1/2% FIRST MORTGAGE BONDS - CONVERTED TO COMMON STOCK

Schedule 2-a

<u>Date</u>	<u>Shares</u>	<u>Bought From</u>	<u>Cost</u>
6-1-35	12	Original Holding	\$1,200.00
10-3-35	10	Anderson & Plots	\$ 100.00
8-5-35	1	Knoland & Co.	5.00
9-7-37	10	Olan & Co.	30.00
4-27-38	8	W. E. Atlas	8.00
5-15-38	245	Col. Sec. Co.	725.00
5-15-38	20	Knoland & Co.	100.00
1-22-42	1	Jas. & Lucille Davis	5.00
8-5-42	5	First La Salle Co.	15.00
	<u>500</u>		<u>\$ 996.00</u>

ALLIANCE TRUST CO., INC. - 1st TRST. FUND

Schedule B

DATE	SECURITY No.	PAR. VALUE	ST. FUND	COST
3-13-33	1232	1,000.00	Cal. Sec. Co	120.00
	1233	1,000.00	"	120.00
11-10-33	1234	1,000.00	Walter Warren & Chandler	120.00
	1235	1,000.00	"	120.00
	1236	1,000.00	"	120.00
	1237	1,000.00	"	120.00
	1238	1,000.00	"	120.00
	1239	1,000.00	"	120.00
12-17-33	1240	1,000.00	Wiley & Co	120.00
12-21-33	1241	800.00	Cal. Sec. Co.	77.50
	1242	800.00	"	77.50
	1243	800.00	"	77.50
3-6-34	1244	800.00	"	77.50
	1245	1,000.00	"	120.00
12-23-34	1246	1,000.00	1st Nat'l Bank	200.00
	1247	1,000.00	"	200.00
	1248	1,000.00	"	200.00
1-3-35	1249	1,000.00	1st Nat'l Bank	200.00
	1250	1,000.00	"	200.00
	1251	1,000.00	"	200.00
	1252	1,000.00	"	200.00
3-13-35	1253	1,000.00	Wells Fargo & Co.	200.00
		<u>21,000.00</u>		<u>2,725.00</u>

2nd TRST. FUND

11-20-37	1254	1,000.00	Wells Fargo	200.00
	1255	1,000.00	"	200.00
	1256	1,000.00	"	200.00
	1257	1,000.00	"	200.00
	1258	1,000.00	"	200.00
	1259	1,000.00	"	200.00
	1260	1,000.00	"	200.00
	1261	1,000.00	"	200.00
	1262	1,000.00	"	200.00
	1263	1,000.00	"	200.00
	1264	1,000.00	"	200.00
	1265	1,000.00	"	200.00
	1266	1,000.00	"	200.00
	1267	1,000.00	"	200.00
	1268	1,000.00	"	200.00
	1269	1,000.00	"	200.00
	1270	1,000.00	"	200.00
	1271	1,000.00	"	200.00
	1272	1,000.00	"	200.00
	1273	1,000.00	"	200.00
	1274	1,000.00	"	200.00
	1275	1,000.00	"	200.00
	1276	1,000.00	"	200.00
	1277	1,000.00	"	200.00
	1278	1,000.00	"	200.00
	1279	1,000.00	"	200.00
	1280	1,000.00	"	200.00
	1281	1,000.00	"	200.00
	1282	1,000.00	"	200.00
	1283	1,000.00	"	200.00
	1284	1,000.00	"	200.00
	1285	1,000.00	"	200.00
	1286	1,000.00	"	200.00
	1287	1,000.00	"	200.00
	1288	1,000.00	"	200.00
	1289	1,000.00	"	200.00
	1290	1,000.00	"	200.00
	1291	1,000.00	"	200.00
	1292	1,000.00	"	200.00
	1293	1,000.00	"	200.00
	1294	1,000.00	"	200.00
	1295	1,000.00	"	200.00
	1296	1,000.00	"	200.00
	1297	1,000.00	"	200.00
	1298	1,000.00	"	200.00
	1299	1,000.00	"	200.00
	1300	1,000.00	"	200.00
	1301	1,000.00	"	200.00
	1302	1,000.00	"	200.00
	1303	1,000.00	"	200.00
	1304	1,000.00	"	200.00
	1305	1,000.00	"	200.00
	1306	1,000.00	"	200.00
	1307	1,000.00	"	200.00
	1308	1,000.00	"	200.00
	1309	1,000.00	"	200.00
	1310	1,000.00	"	200.00
	1311	1,000.00	"	200.00
	1312	1,000.00	"	200.00
	1313	1,000.00	"	200.00
	1314	1,000.00	"	200.00
	1315	1,000.00	"	200.00
	1316	1,000.00	"	200.00
	1317	1,000.00	"	200.00
	1318	1,000.00	"	200.00
	1319	1,000.00	"	200.00
	1320	1,000.00	"	200.00
	1321	1,000.00	"	200.00
	1322	1,000.00	"	200.00
	1323	1,000.00	"	200.00
	1324	1,000.00	"	200.00
	1325	1,000.00	"	200.00
	1326	1,000.00	"	200.00
	1327	1,000.00	"	200.00
	1328	1,000.00	"	200.00
	1329	1,000.00	"	200.00
	1330	1,000.00	"	200.00
	1331	1,000.00	"	200.00
	1332	1,000.00	"	200.00
	1333	1,000.00	"	200.00
	1334	1,000.00	"	200.00
	1335	1,000.00	"	200.00
	1336	1,000.00	"	200.00
	1337	1,000.00	"	200.00
	1338	1,000.00	"	200.00
	1339	1,000.00	"	200.00
	1340	1,000.00	"	200.00
	1341	1,000.00	"	200.00
	1342	1,000.00	"	200.00
	1343	1,000.00	"	200.00
	1344	1,000.00	"	200.00
	1345	1,000.00	"	200.00
	1346	1,000.00	"	200.00
	1347	1,000.00	"	200.00
	1348	1,000.00	"	200.00
	1349	1,000.00	"	200.00
	1350	1,000.00	"	200.00
	1351	1,000.00	"	200.00
	1352	1,000.00	"	200.00
	1353	1,000.00	"	200.00
	1354	1,000.00	"	200.00
	1355	1,000.00	"	200.00
	1356	1,000.00	"	200.00
	1357	1,000.00	"	200.00
	1358	1,000.00	"	200.00
	1359	1,000.00	"	200.00
	1360	1,000.00	"	200.00
	1361	1,000.00	"	200.00
	1362	1,000.00	"	200.00
	1363	1,000.00	"	200.00
	1364	1,000.00	"	200.00
	1365	1,000.00	"	200.00
	1366	1,000.00	"	200.00
	1367	1,000.00	"	200.00
	1368	1,000.00	"	200.00
	1369	1,000.00	"	200.00
	1370	1,000.00	"	200.00
	1371	1,000.00	"	200.00
	1372	1,000.00	"	200.00
	1373	1,000.00	"	200.00
	1374	1,000.00	"	200.00
	1375	1,000.00	"	200.00
	1376	1,000.00	"	200.00
	1377	1,000.00	"	200.00
	1378	1,000.00	"	200.00
	1379	1,000.00	"	200.00
	1380	1,000.00	"	200.00
	1381	1,000.00	"	200.00
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	1389	1,000.00	"	200.00
	1390	1,000.00	"	200.00
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	1392	1,000.00	"	200.00
	1393	1,000.00	"	200.00
	1394	1,000.00	"	200.00
	1395	1,000.00	"	200.00
	1396	1,000.00	"	200.00
	1397	1,000.00	"	200.00
	1398	1,000.00	"	200.00
	1399	1,000.00	"	200.00
	1400	1,000.00	"	200.00
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	1409	1,000.00	"	200.00
	1410	1,000.00	"	200.00
	1411	1,000.00	"	200.00
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	1414	1,000.00	"	200.00
	1415	1,000.00	"	200.00
	1416	1,000.00	"	200.00
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	1460	1,000.00	"	200.00
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	1470	1,000.00	"	200.00
	1471	1,000.00	"	200.00
	1472	1,000.00	"	200.00
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	1477	1,000.00	"	200.00
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	1479	1,000.00	"	200.00
	1480	1,000.00	"	200.0

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FERRY STATION POST OFFICE, INC. -- 2nd MORTGAGE

Schedule 2-f

<u>Date</u>	<u>Par Value</u>	<u>Bought From</u>	<u>Cost</u>	<u>Interest</u>
6-4-35	\$ 2,000.00	O. L. Shillinglaw & Co.	\$100.00	5-13-37
1-21-37	3,500.00	Col. Sec. Co.	87.50	Initial distribution
9-28-37	50,500.00	P.H.D., Chairman	505.00	@ 50.55 per M \$ 101.08
5-16-38	25,200.00	Col. Sec. Co.	126.00	
5-16-40	1,000.00	Col. Sec. Co.	50.00	12-1-40
				1/2% on \$2,200 411.00
	<u>\$22,200.00</u>		<u>\$248.50</u>	
				12-1-42
				1/2% on \$2,200 222.00
				6-1-43
				1/2% on \$2,200 411.00
				<u>Total Interest \$1,745.08</u>

PAVING AND PAVING TRUCKS, C.A.F. - 1st MORTGAGE

1st MORTGAGE

Date Acquired	Security No.	PAR	Bought From	Cost	INT. PAY 9-15-37	9-15-37	12-15-37	3-15-38	12-15-38
1-1-34	B 82	1,500.00	Cal. Sec. Co.	150.00	15.00	7.50	7.50	7.50	7.50
	128	800.00		120.00	20.00	7.50	7.50	7.50	7.50
12-5-34	B 94	800.00	Harvard Leather Co.	125.00	20.00	7.50	7.50	7.50	7.50
10-5-37 as of	B 81	800.00	P.S.B. Earl I. Gustin & Co.	65.00	20.00	7.50	7.50	7.50	7.50
11-15-37	B 129	1,000.00		150.00	25.00	25.00	25.00	25.00	25.00
12-15-38	B 130	1,000.00	Gen'l. Ill. Bank	600.00					
	132	1,000.00		600.00					
	134	1,000.00		600.00					
		<u>12,000.00</u>		<u>1,800.00</u>	<u>115.00</u>	<u>125.00</u>	<u>145.00</u>	<u>145.00</u>	<u>145.00</u>

2nd MORTGAGE

1-15-38	B 19	500.00	Cal. Sec. Co.	75.00					
	20	500.00		75.00			2.50	2.50	
	26	500.00		75.00			2.50	2.50	
	27	500.00		75.00			2.50	2.50	
1-15-39	28	500.00		55.00					
		<u>12,500.00</u>		<u>1,345.00</u>			<u>125.00</u>	<u>125.00</u>	

THE UNIVERSITY OF CHICAGO PRESS

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<u>12-12-48</u>	<u>12-22-48</u>
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Total Interest Earned \$1,125.00

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RECEIVED DISTRICT ATTORNEY, DISTRICT OF COLUMBIA

DATE	MONTH	DAY	AMOUNT	NAME	COST	INTEREST
						1-1-40
1-1-40	1	1	100.00	Cal. Sec. Co.	100.00	7.00
1-1-40	1	1	100.00	Cal. Sec. Co.	100.00	7.00
1-1-40	1	1	100.00	"	100.00	7.00
1-1-40	1	1	100.00	Cal. Sec. Co.	100.00	12.00
1-1-40	1	1	100.00	Cal. Sec. Co.	175.00	7.00
1-1-40	1	1	100.00	"	100.00	12.00
1-1-40	1	1	100.00	Cal. Sec. Co.	175.00	7.00
1-1-40	1	1	100.00	Grace Collins	100.00	12.00
1-1-40	1	1	100.00	Kathryn L. Lee	100.00	
1-1-40	1	1	100.00	Chas. Weidrick & Marie Weyer	175.00	
			100.00		100.00	
			2,000.00		2,712.00	52.00

1-1-61	7-1-61	7-1-62	1-1-63	7-1-63
7.50	7.50	7.50	7.50	7.50
7.50	7.50	7.50	7.50	7.50
7.50	7.50	7.50	7.50	7.50
15.00	15.00	15.00	15.00	15.00
7.50	7.50	7.50	7.50	7.50
15.00	15.00	15.00	15.00	15.00
7.50	7.50	7.50	7.50	7.50
15.00	15.00	15.00	15.00	15.00
		15.00	15.00	15.00
<u>52.50</u>	<u>52.50</u>	<u>57.50</u>	<u>57.50</u>	<u>57.50</u>

Total Interest Earned \$540.00

REPORT OF THE BOARD OF DIRECTORS OF THE

DATE	SECURITY	PR	ST	COST	INTEREST	4-1-36
						PR. Jan 36
12-31-35	U.S. GOVT	100.00	100.00 /	100.00	10.00	10.00
	U.S. GOVT	100.00	"	100.00	10.00	10.00
	U.S. GOVT	100.00	"	100.00	10.00	10.00
	U.S. GOVT	100.00	"	100.00	10.00	10.00
	U.S. GOVT	100.00	"	100.00	10.00	10.00
	U.S. GOVT	100.00	"	100.00	10.00	10.00
	U.S. GOVT	1,000.00	"	1,000.00	100.00	100.00
	U.S. GOVT	1,000.00	"	1,000.00	100.00	100.00
1-1-36	U.S. GOVT	100.00	Rep. D. Chairman	150.00	15.00	15.00
	U.S. GOVT	100.00	"	150.00	15.00	15.00
	U.S. GOVT	100.00	"	10.00	1.00	1.00
	U.S. GOVT	100.00	"	10.00	1.00	1.00
	U.S. GOVT	100.00	"	10.00	1.00	1.00
	U.S. GOVT	100.00	"	10.00	1.00	1.00
	U.S. GOVT	100.00	"	10.00	1.00	1.00
	U.S. GOVT	100.00	"	10.00	1.00	1.00
	U.S. GOVT	<u>1,000.00</u>		<u>1,075.00</u>		

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2	25,000.00	22	25,000.00
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3	25,000.00	23	25,000.00
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4	25,000.00	24	25,000.00
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5	25,000.00	25	25,000.00
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6	25,000.00	26	25,000.00
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7	25,000.00	27	25,000.00
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TOTAL INTEREST PAID 34,232.34

ROSELAND BUILDING CORP. - 1st MORTGAGE

Schedule 2-k

<u>Date</u>	<u>Security No.</u>	<u>Par</u>	<u>Bought From</u>	<u>Cost</u>
11-18-36	D 120	\$ 500.00	Geo. Maghie & Company	\$ 30.00
8-22-37	C 36	100.00	F.R.C./Earl I. Custin & Co. 11-12-35	8.50
	40	100.00	"	8.50
	41	100.00	"	8.50
	53	100.00	"	8.50
	54	100.00	"	8.50
	D 123	500.00	"	42.50
	M 161	1,000.00	"	85.00
	163	1,000.00	"	85.00
9-10-37	D 90	500.00	Jas. V. Torpie	25.00
	91	500.00	"	25.00
	156	500.00	"	25.00
	M 173	1,000.00	"	80.00
6-16-38	C 59	100.00	Col. Sec. Co.	3.00
	60	100.00	"	3.00
	61	100.00	"	3.00
7-10-39	D 142	500.00	Gussie Meyer	50.00
	143	500.00	"	50.00
	144	500.00	"	50.00
	145	500.00	"	50.00
11-12-40	C 79	100.00	Greenbaum Investment Co.	5.00
2-13-41	D 124	500.00	Encelard & Co.	27.50
10-15-42	M 165	1,000.00	A. C. Allyn & Co.	100.00
	166	1,000.00	"	100.00
	167	1,000.00	"	100.00
	168	1,000.00	"	100.00
	169	1,000.00	"	100.00
	170	1,000.00	"	100.00
	171	1,000.00	"	100.00
	172	1,000.00	"	100.00
		<u>\$18,500.00</u>		<u>\$1,651.50</u>

U. S. AIR FORCE - Los Angeles

UNITED STATES

Original Building
 1000 10th St. S.
 Phoenix, Arizona
 U. S. Air Force
 1000 10th St. S.
 Phoenix, Arizona

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<u>Feb 14 1938</u>	<u>2-1-39</u>	<u>2-1-39</u>	<u>2-1-39</u>	<u>2-1-39</u>	<u>2-1-40</u>	<u>2-1-40</u>	<u>2-1-41</u>	<u>2-1-41</u>
\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50	\$ 1.50	\$ 1.50	\$ 2.00	\$ 1.50	\$ 1.50
	2.50	2.50	2.50	1.50	1.50	2.00	1.50	1.50
	2.50	1.50	2.50	1.50	1.50	2.00	1.50	1.50
	25.00							
	15.00							
	2.50	2.50	2.50	1.50	1.50	2.00	1.50	1.50
	12.50	12.50	12.50	7.50	7.50	10.00	7.50	7.50
<u>2.50</u>	<u>72.50</u>	<u>22.50</u>	<u>22.50</u>	<u>13.50</u>	<u>15.50</u>	<u>15.00</u>	<u>15.50</u>	<u>13.50</u>

TOTAL INTEREST PAID \$157.00

7.50	7.50	7.50	5.00	5.00	5.00	5.00	5.00
7.50	7.50	7.50	5.00	5.00	5.00	5.00	5.00
7.50	7.50	7.50	5.00	5.00	5.00	5.00	5.00
15.00	15.00	15.00	10.00	10.00	10.00	10.00	10.00
15.00	15.00	15.00	10.00	10.00	10.00	10.00	10.00
7.50	7.50	7.50	5.00	5.00	5.00	5.00	5.00
15.00	15.00	15.00	10.00	10.00	10.00	10.00	10.00
15.00	15.00	15.00	10.00	10.00	10.00	10.00	10.00
15.00	15.00	15.00	10.00	10.00	10.00	10.00	10.00
	15.00	15.00	10.00	10.00	10.00	10.00	10.00
	15.00	15.00	10.00	10.00	10.00	10.00	10.00
	15.00	15.00	10.00	10.00	10.00	10.00	10.00
<u>100.00</u>	<u>150.00</u>	<u>150.00</u>	<u>130.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>

TOTAL INTEREST PAID \$160.00

SOUTH SIDE FORT OFFICE SERVICES BROS. CORP. 1st MORTGAGE

Schedule 2 a

<u>Date Purchased</u>	<u>Security No.</u>	<u>For</u>	<u>Bought From</u>	<u>Price</u>	<u>Interest 9-1-35</u>	<u>9-1-36</u>	<u>9-1-37</u>
7-14-35	C 64	\$ 100.00	P.D.B./Merl L. Curtis & Co. 11-12-35	\$ 13.00	\$ 3.25	\$ 3.25	\$ 1.00
	D 144	500.00		75.00	15.25	15.25	7.50
9-1-35	H 324	1,000.00	Reichelt Bethel	400.00			
10-27-35	D 178	500.00	W. E. Flanagan	100.00			
9-1-35	D 35	500.00	Cal. Sec. Co.	200.00			
	56	500.00	.	200.00			
	133	500.00	.	200.00			
	C 41	100.00	.	40.00			
	77	100.00	.	40.00			
	78	100.00	.	40.00			
	86	100.00	.	40.00			
	87	100.00	.	40.00			
9-8-35	C 120	100.00	W. J. Albare	40.00			
9-10-35	H 122	1,000.00	Cal. Sec. Co.	400.00			
12-28-35	D 148	500.00	.	207.50			
	150	500.00	.	207.50			
		<u>\$2,200.00</u>		<u>\$2,200.00</u>	<u>\$12.50</u>	<u>\$12.50</u>	<u>\$2.50</u>

<u>2-1-37</u>	<u>2-1-37</u>	<u>2-1-38</u>	<u>2-1-38</u>	<u>2-1-38</u>	<u>2-1-38</u>	<u>2-1-40</u>	<u>2-1-40</u>	<u>2-1-41</u>	<u>2-1-41</u>	<u>2-1-42</u>	<u>2-1-42</u>	<u>2-1-43</u>	<u>2-1-43</u>
\$ 1.50	\$ 1.50	\$ 1.50	\$ 1.50	\$ 1.50	\$ 1.50	\$ 1.50	\$ 1.50	\$ 1.50	\$ 1.50	\$ 1.50	\$ 1.50	\$ 1.50	\$ 1.50
7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50
				15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00
				7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50
					7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50
					7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50
					7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50
					1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50
					1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50
					1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50
					1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50
					1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50
					15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00
						7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50
						7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50
							(157) 7.50	7.50	7.50	7.50	7.50	7.50	7.50
											(179) 7.50	7.50	7.50
											(199) 15.00	15.00	15.00
											(200) 15.00	15.00	15.00
<u>25.00</u>	<u>25.00</u>	<u>25.00</u>	<u>25.00</u>	<u>25.00</u>	<u>25.00</u>	<u>25.00</u>	<u>25.00</u>	<u>25.00</u>	<u>25.00</u>	<u>25.00</u>	<u>25.00</u>	<u>25.00</u>	<u>25.00</u>

Total Interest Earned \$257.50

1-44

90

SENECA ST. STATION BLDG. CORP. - 1st MORTGAGE

Schedule 2 a

Date	Security No.	For	Bought From	Cost	INTEREST 12-1-33 Rec'd. Apr. 1936	6-1-34 Rec'd. Apr. 1936	12-1-35
	D 141	\$ 500.00	Original Holding	\$ 500.00	8.75	7.50	7.50
	M 215	1,000.00	"	1,000.00	27.00	15.00	15.00
	249	1,000.00	"	1,000.00	27.00	15.00	15.00
	277	1,000.00	"	1,000.00	27.00	15.00	15.00
5-3-35	M 235	1,000.00	F.B.D./Graham & Co. 10-23-35	1,000.00			15.00
	234	1,000.00	"	1,000.00			15.00
	236	1,000.00	"	1,000.00			15.00
	238	1,000.00	"	1,000.00			15.00
	237	1,000.00	"	1,000.00			15.00
11-30-37	M 213	1,000.00	Cal. Sec. Co.	1,000.00			15.00
5-15-38	D 185	500.00	"	500.00			
	186	500.00	"	500.00			
	M 232	1,000.00	"	1,000.00			
	233	1,000.00	"	1,000.00			
	238	1,000.00	"	1,000.00			
	239	1,000.00	"	1,000.00			
	244	1,000.00	"	1,000.00			
7-3-38	A 182	500.00	F.B.D./A. I. Gustin & Co. 11-12-38	500.00			7.50
	183	500.00	"	500.00			7.50
	172	500.00	"	500.00			7.50
	180	500.00	"	500.00			7.50
	M 234	1,000.00	"	1,000.00			15.00
	235	1,000.00	"	1,000.00			15.00
	236	1,000.00	"	1,000.00			15.00
	235	1,000.00	"	1,000.00			15.00
8-3-41	D 179	500.00	Cal. Sec. Co.	500.00			15.00
		<u>\$15,500.00</u>		<u>\$15,977.50</u>			

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11.25 11.25 11.25

VILLA BUILDING CORP. - 1st MORTGAGE

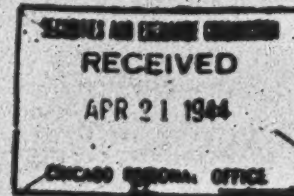
Schedule 2-a

<u>Date</u>	<u>Security No.</u>	<u>Par</u>	<u>Bought From</u>	<u>Cost</u>
12-3-36	D 47	\$ 500.00	Monarch Leather Co.	\$ 25.00
12-4-36	D 15	500.00	P.E.D. Chairman	50.00
	16	500.00	"	50.00
	66	500.00	"	50.00
	67	500.00	"	50.00
5-22-37	22	500.00	P.E.D./E. I. Custin & Co. 11-12-35	32.50
	23	500.00	"	32.50
	34	500.00	"	32.50
	35	500.00	"	32.50
	36	500.00	"	32.50
	37	500.00	"	32.50
	49	500.00	"	32.50
	50	500.00	"	32.50
	51	500.00	"	32.50
	52	500.00	"	32.50
	53	500.00	"	32.50
	54	500.00	"	32.50
	55	500.00	"	32.50
	56	500.00	"	32.50
	57	500.00	"	32.50
	58	500.00	"	32.50
	59	500.00	"	32.50
	60	500.00	"	32.50
	61	500.00	"	32.50
	62	500.00	"	32.50
	63	500.00	"	32.50
	64	500.00	"	32.50
	65	500.00	"	32.50
	66	500.00	"	32.50
	67	500.00	"	32.50
	68	500.00	"	32.50
	108	1,000.00	"	65.00
9-29-37	D 41	500.00	Col. Sec. Co.	30.00
5-16-38	O 27	500.00	Col. Sec. Co.	15.00
	28	500.00	"	15.00
	29	500.00	"	15.00
	30	500.00	"	15.00
	31	500.00	"	15.00
	32	500.00	"	15.00
		<u>\$16,500.00</u>		<u>\$1,087.50</u>

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97 And afterwards on, to wit, the 21st day of April, 1944 there was filed in the Clerk's office of said Court a certain Detailed Schedules Supplementing Final Report And Account Of Paul E. Darrow, Trustee, Filed Pursuant To Court Order Dated November 29, 1943, in Case No. 58335 in words and figures following, to wit:

Sanjour - Kelly



NO. 58335

IN THE DISTRICT COURT OF
THE UNITED STATES FOR THE
NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION

In the Matter of

NATIONAL REALTY TRUST,
a common law trust,

Debtor.

DETAILED SCHEDULES SUPPLEMENTING FINAL REPORT AND ACCOUNT OF PAUL E. DARROW, TRUSTEE, FILED PURSUANT TO COURT ORDER DATED NOVEMBER 29, 1943.

ADAMS, NELSON & WILLIAMSON
LAW OFFICES
20 SOUTH LA SALLE STREET
FRANKLIN SQUARE
CHICAGO

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NATIONAL REALTY TRUST
PAGE No. 10000, PART 1
SUMMARY OF CASH AND INTEREST DISBURSEMENTS
Period from June 1, 1935 to August 15, 1943

RECEIPTS

Management charges to subsidiary companies	Schedule 1	\$98,035.00	
Interest on securities of subsidiary companies	Schedule 2	63,004.26	
Profit on bonds sold to Sinking Fund		100.00	
Profit on bonds sold to others		15.00	
Amount realized on bonds of original holdings sold to Sinking Funds	Schedule 2	<u>2,060.00</u>	
		<u>2,165.00</u>	\$163,202.26

DISBURSEMENTS

Net purchases of bonds of subsidiary companies	Schedule 2	\$49,534.25	
Net cash advances to subsidiary companies	Schedule 3	6,500.00	
Net loans to bond holders - -	Schedule 3a	-	
Salary accounts - -	Schedule 4	-	
Trustee salary		122,123.45	
Office salaries		<u>50,633.62</u>	72,757.07
Operating expenses - -	Schedule 5	<u>30,031.92</u>	138,821.74
To Stacy Messer, Trustee and petty cash funds		<u>4,379.02</u>	3163,202.26

CASH BALANCE

NONE

MANAGEMENT TRANSFERS TO SUBSIDIARY COMPANIES

Schedule 1

	1935 from June 1	1936	1937	1938
Armour Station Building Corp.	\$ 284.08	\$ 487.00	\$ 486.09	\$ 7.50
Austin Station Building Corp.	745.49	1,104.00	1,282.25	1,866.25
Berwyn Post Office Building Corp.	305.11	245.46	275.25	246.00
6748 Cranden Ave. Building Corp.	493.80	829.73	933.93	1,062.65
Division and Lavergne Building Corp.	447.15	672.90	647.58	632.50
Station F (Postal Facilities, Inc.)	1,381.21	2,992.70	2,762.49	2,762.50
Grand Rapids Parcel Post Building Corp.	-	559.53	479.90	439.90
LaGrange Post Office Building Corp.	176.97	241.50	139.34	45.50
Los Angeles Service Station, Inc.	200.00	300.00	300.00	372.70
Ogden Park Post Office Building Corp.	446.43	707.44	723.02	721.42
Parkview Manor Building Co.	1,334.12	2,139.20	2,309.36	2,210.67
6929 N. Clark Str. Building Corp.	495.48	1,182.70	1,039.36	1,060.36
Windsor Shore Building Corp.	429.41	910.33	845.48	829.25
TOTAL	\$6,639.13	\$12,462.51	\$12,345.15	\$11,746.20

<u>1939</u>	<u>1940</u>	<u>1941</u>	<u>1942</u>	<u>1943</u> <u>To Aug. 12</u>	<u>Total</u>
\$ 123.75	\$ 61.25	\$ 68.00	\$ 124.50	\$ 49.25	\$ 1,692.30
1,343.75	1,354.78	1,330.50	1,343.75	749.15	10,099.08
224.50	239.51	122.50	23.75	55.75	1,021.53
1,010.55	1,080.64	1,080.55	1,159.12	666.97	5,308.30
633.75	608.64	604.25	608.15	343.93	5,212.52
2,762.50	2,762.50	2,762.50	2,762.50	1,611.45	22,560.55
519.60	479.60	479.60	479.60	279.60	5,716.75
36.00	46.00	72.00	60.00	55.60	914.31
396.00	409.50	450.00	450.00	292.50	5,170.00
516.08	789.70	537.95	559.77	305.65	5,517.44
2,400.16	2,379.35	2,550.63	2,521.25	1,508.73	19,552.47
908.16	1,067.59	1,013.72	1,056.25	597.62	5,391.34
525.92	573.74	910.25	913.21	534.51	7,074.15
<u>\$11,714.72</u>	<u>\$12,115.78</u>	<u>\$12,019.64</u>	<u>\$12,040.99</u>	<u>\$7,061.78</u>	<u>\$58,055.00</u>

STATEMENT OF BOND TRANSACTIONS AND CURRENT EARNINGS

Schedule B.

		<u>TOTAL BOND PRINCIPALS</u>	
		<u>1914</u>	<u>1917</u>
Amesbury Station Bldg. Corp.	1st Mortgage	\$ 4,000.00	\$ 4,000.00
Austin Station Bldg. Corp.	1st Mortgage	24,000.00	11,000.00
	2nd Mortgage	2,000.00	1,700.00
Beverly Post Office Bldg. Corp.	1st Mortgage	6,000.00	2,200.00
	2nd Mortgage	7,000.00	1,000.00
6700 Canadian Avenue Bldg. Corp.	1st Mortgage	1,000.00	800.00
Division and Laverne Bldg. Corp.	1st Mortgage	10,000.00	7,000.00
Station F. (Postal Facilities, Inc.)	1st Mortgage	21,000.00	11,000.00
	2nd Mortgage	2,000.00	600.00
Grand Rapids Parcel Post Bldg. Corp.	1st Mortgage	2,700.00	1,700.00
	2nd Mortgage	1,000.00	500.00
Lakewood Post Office Bldg. Corp.	1st Mortgage	14,000.00	1,100.00
Los Angeles Service Station, Inc.	1st Mortgage	2,000.00	700.00
Ogden Park Post Office Bldg. Corp.	1st Mortgage	2,000.00	1,000.00
Portview Manor Bldg. Corp.	1st Mortgage	10,000.00	2,000.00
" " " "	Class A Stock	70.8 Shares	—
" " " "	Class B Stock	240 Shares	1,217.00
2000 North Clark St. Bldg. Corp.	1st Mortgage	2,000.00	1,000.00
Windsor Shore Bldg. Corp.	1st Mortgage	12,000.00	2,775.00
			<hr/>
			\$51,500.00
			<hr/>

*These bonds were considered as having been sold from the original holding thus having no cost to the operations of Paul R. Brown, Trustee.

[illegible]

Year	Amount
1968	110.00
1969	100.00
1970	50.00
Total	260.00

Schedule B

ADVANCE

DATE	NAME	AMOUNT
1-7-33	Los Angeles Serv. Sta., Inc.	300.00
1-10-33	"	400.00
1-10-33	6748 Grand Ave. Bldg. Corp.	150.00
1-11-33	"	300.00
1-11-33	"	1400.00
1-11-33	"	500.00
1-11-33	Windsor Shore Bldg. Corp.	300.00
1-11-33	Division & Leverage Bldg. Corp.	1000.00
1-11-33	Windsor Shore Bldg. Corp.	300.00
1-11-33	Division & Leverage Bldg. Corp.	500.00
1-11-33	"	500.00
1-11-33	Austin Station Bldg. Corp.	700.00
1-11-33	Division & Leverage Bldg. Corp.	700.00
1-11-33	6748 Grand Ave. Bldg. Corp.	300.00
1-11-33	Parkview Manor Bldg. Co.	2500.00
1-11-33	Grand Rapids Parcel Post Bldg. Corp.	115.35
1-11-33	Parkview Manor Bldg. Co.	300.00
1-11-33	"	300.00
1-11-33	Division & Leverage Bldg. Corp.	300.00
1-11-33	"	300.00
1-11-33	2222 N. Clark St. Bldg. Corp.	2000.00
1-11-33	Austin Station Bldg. Corp.	750.00
1-11-33	6748 Grand Ave. Bldg. Corp.	150.00
1-11-33	"	150.00
1-11-33	"	150.00
1-11-33	Parkview Manor Bldg. Co.	300.00
1-11-33	"	300.00
1-11-33	"	315.30
1-11-33	6748 Grand Ave. Bldg. Corp.	300.00
1-11-33	Division & Leverage Bldg. Corp.	300.00
1-11-33	2222 N. Clark St. Bldg. Corp.	2000.00
1-11-33	6748 Grand Ave. Bldg. Corp.	300.00
1-11-33	Austin Station Bldg. Corp.	300.00
1-11-33	"	300.00
1-11-33	"	300.00
1-11-33	"	30.00

REPAYMENTS

WALACE

Aug. 15, 1948

DATE	A. DUTY	INTEREST
1-22-36	100.00	4.35
6-11-36	100.00	.67
4-10-36	250.00	8.27
4-30-36	300.00	2.33
6-19-36	1000.00	11.89
12-15-36	900.00	16.47
2-20-36	300.00	
10-15-36	1000.00	6.05
12-15-36	500.00	
2-6-37	1000.00	4.09
3-17-37	700.00	1.03
5-23-37	400.00	
10-6-37	300.00	6.23
2-24-37	800.00	
3-23-37	1200.00	
10-15-37	1500.00	
11-10-37	500.00	16.93
2-21-37	115.25	
7-14-37	600.00	1.00
7-21-37	500.00	1.00
10-6-38	500.00	6.05
10-6-38	500.00	3.21
1-21-39	1500.00	23.97
1-11-39	750.00	6.02
1-11-39	350.00	1.73
11-15-39	300.00	3.50
2-12-40	300.00	5.07
6-12-40	400.00	
2-2-40	250.00	
12-12-40	300.00	
5-20-40	1000.00	
4-10-40	300.00	43.71
2-12-40	250.00	
12-12-40	500.00	4.35
11-1-40	750.00	.73
1-2-40	324.25	4.24
	<u>21,091.25</u>	<u>190.22</u>

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11

1900-1901

11

11

11



11

1

EXPAYMENTS

DATE

AMOUNT

INTEREST

BALANCE

12-31-40

\$1,001.00

100.00

12-12-40

100.00

1-2-41

200.00

7.00

7-2-40

1,000.00

2.00

7-2-40

200.00

1.00

11-12-40

200.00

1.01

7-22-40

400.00

.00

10-12-40

200.00

11-1-40

200.00

12-11-40

200.00

12-10-40

200.00

1-2-41

200.00

2-10-41

200.00

45.00

11-2-40

200.00

.00

12-12-40

200.00

1-2-41

200.00

2-10-41

1,200.00

21.00

2-20-41

2,000.00

10.40

2-1-41

712.17

2-12-41

200.00

7-2-41

200.00

5.11

2-12-41

1,200.00

7-2-41

200.00

4.07

10-2-41

700.00

2.50

2-2-41

700.00

2.91

2-2-41

200.00

.00

2-11-41

200.00

12-2-41

200.00

12-22-41

200.00

11-7-41

200.00

12-2-41

1,000.00

20.00

12-27-41

1,100.00

12.00

2-22-41

1,000.00

2.50

12-12-41

200.00

1-7-42

200.00

6.00

12-2-41

1,000.00

12-21-41

200.00

1-2-42

1,000.00

1-27-42

200.00

2-1-42

1,000.00

2.00

7-1-42

1,000.00

\$10,513.00

\$221.77

ADVANCES TO SUBSIDIARY COMPANIES - Contd.

Schedule B

ADVANCES

DATE	NAME	AMOUNT
	Forward	\$54,915.50
12-24-42	Parkview Manor Bldg. Co.	1,500.00
1-20-43	Division and Laverne Bldg. Corp.	500.00
5-1-43	Austin Station Bldg. Corp.	1,500.00
6-12-43	" " " "	500.00
10-2-43	" " " "	100.00
7-22-43	Los Angeles Service Sta., Inc.	500.00
1-3-44	6529 E. Clark St. Bldg. Corp.	1,000.00
1-31-44	" " " "	500.00
1-2-44	Ogden Park Post Office Bldg. Corp.	500.00
10-20-43	Austin Station Bldg. Corp.	1,000.00
11-2-43	Windsor Shore Bldg. Corp.	3,500.00
11-2-43	6728 Grand Ave. Bldg. Corp.	3,500.00
12-24-42	Ogden Park Post Office Bldg. Corp.	500.00
1-22-43	Division and Laverne Bldg. Corp.	500.00
6-22-43	Ogden Park Post Office Bldg. Corp.	1,000.00
7-22-43	6529 E. Clark St. Bldg. Corp.	4,500.00
		<u>\$76,915.50</u>

REPAYMENTS

DATE	AMOUNT	INTEREST	BALANCE Aug. 15, 1943
	\$40,513.50	\$200.77	
10-1-43	1,000.00		
12-1-43		\$21.00	
1-1-44	1,000.00		
1-1-44	500.00	5.00	
2-1-44	1,000.00		
3-1-44	1,000.00		\$ 2,000.00
3-1-44	500.00	.50	
5-1-44	500.00		
5-30-44	500.00		
5-1-45	500.00		
5-1-45	500.00		
10-27-45		17.35	
5-30-45	500.00	1.00	
10-1-45	1,000.00		
11-1-45	500.00		
12-1-45	500.00		
12-1-45	500.00		
10-1-46	500.00	\$3.72	
11-1-46	400.00		
11-1-46	400.00	5.71	
11-1-46	500.00		
11-1-46	500.00	1.01	
12-1-46	500.00		
12-31-46		\$1.01	
1-1-47	500.00		
1-31-47	500.00		
2-1-47	500.00		
2-11-47	1,000.00		
2-11-47	500.00	\$7.20	
11-1-47	500.00		
12-1-47	1,000.00		
12-1-47	700.00	10.21	
2-28-48	500.00	0.00	
2-1-48	500.00	.50	
2-28-48	1,000.00	0.00	
	<u>\$40,513.50</u>	<u>\$722.08</u>	<u>1,000.00</u>
			<u>\$ 4,000.00</u>

• Interest Carried to Schedule B

LOANS TO BOARDHOLDERS

Schedule 3 a.

<u>DATE</u>	<u>NAME</u>	<u>AMOUNT</u>
2-2-35	Eng. Co.	\$ 150.00
10-6-35	George Sheopoules	500.00
9-23-35		150.00
3-2-36	Eng. Co.	150.00
		<u>\$ 950.00</u>

REPAYMENTS

<u>DATE</u>	<u>AMOUNT</u>	<u>INTEREST</u>
11-1-55	\$ 50.00	-
12-20-55	100.00	1.37
2-17-56	140.97	9.03
2-15-56	109.08	25.62
12-22-56	66.00	-
1-16-59	144.00	-
6-19-40	196.00	23.05
6-17-56	50.00	-
7-25-56	100.00	.50
	<u>\$ 950.00</u>	<u>\$ 57.77</u>

* Interest carried to Schedule 2.

PAYROLL ACCOUNTS

Schedule C.

		1935 From June 1	1936	1937
EXPENSE SALARY				
Paul E. Miller		\$5,500.00	\$4,450.00	\$5,942.97
Proportion charged to National Trust		1,100.00	2,150.00	1,907.00
Proportion charged to Federal Trust		2,222.22	6,300.00	5,975.99
OTHER SALARY				
William Allen Bonds	Cashier	722.50	1,517.50	1,472.50
William Allen Bonds	Stenographer	722.00	1,402.00	1,500.00
Gertrude Johnson	Clerk	722.00	1,385.00	1,500.00
Myrtle Johnson	Office Manager	1,750.00	3,000.00	3,000.00
Lucy Mae	Telephone Operator	545.00	1,002.50	170.00
C. H. Morgan	Auditor	1,422.00	2,617.50	2,595.00
Blanche Brown	Stenographer	-	-	27.40
Martha Scott	Telephone Operator	-	-	610.00
Jack Rupp	Building Manager	-	-	3,000.00
Virginia Clark	Stenographer	-	-	-
Mary Barker	Stenographer	-	-	-
Edna Rupp		24.50	190.00	21.00
TOTAL		\$5,995.00	\$11,217.50	\$15,142.50
Proportion charged to National Trust		\$1,938.33	\$ 5,779.16	\$ 5,047.43
Proportion charged to Federal Trust		\$3,996.67	\$ 7,538.34	\$10,094.97

1938	1939	1940	1941	1942	1943 to August 15	TOTAL
\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$40,000.00
2,400.00	2,575.00	2,700.00	2,699.11	2,420.00	1,985.00	22,120.00
2,600.00	2,325.00	2,300.00	2,300.89	2,580.00	1,575.00	27,200.00
1,500.00	1,500.00	1,500.00	1,500.00	10.10	-	9,120.00
1,500.00	1,500.00	250.35	-	-	-	7,100.00
1,500.00	1,500.00	1,500.00	1,500.00	1,505.00	900.00	12,000.00
2,000.00	2,000.00	2,000.00	2,000.00	2,002.00	1,200.00	24,707.00
-	-	-	-	-	-	1,712.00
2,000.00	2,000.00	2,000.00	2,000.00	2,002.00	1,200.00	24,100.00
-	-	-	-	-	-	97.00
1,170.00	1,200.00	625.00	-	-	-	2,000.00
2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,100.00	24,000.00
-	-	622.00	1,220.00	275.00	-	1,207.00
-	-	-	-	1,122.15	945.00	2,067.15
-	-	45.00	27.00	-	-	22.00
<hr/>						
\$15,450.00	\$15,400.00	\$14,872.75	\$15,507.30	\$15,047.25	\$7,275.00	\$112,400.00
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\$ 6,150.00	\$ 6,901.00	\$ 6,407.75	\$ 6,404.25	\$ 7,433.00	\$4,001.25	\$ 50,007.00
\$ 9,270.00	\$ 8,578.00	\$ 7,905.00	\$ 8,212.75	\$ 8,612.25	\$3,642.75	\$ 62,300.15

[REDACTED]

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Development and Regulation and Control

[illegible]

ARMOUR STATION BUILDING CORP - 1st. MORTGAGE

Schedule 2 a.

Date Purchased	Security No.	Per	Bought From	Cost	Date Sold
10-24-35	H 25	\$1,000.00	Cent'l. Ill. Nat'l. Bank	\$800.00	8-4-38
10-30-35	D 18	500.00	Cal. Sec. Co.	75.00	8-4-38
8-11-37	H 11	1,000.00	Cal. Sec. Co.	250.00	1-7-38
10-15-37	D 45	500.00	Cal. Sec. Co.	75.00	1-7-38
10-15-37	D 46	500.00	Cal. Sec. Co.	75.00	1-7-38
10-15-37	H 16	1,000.00	Cal. Sec. Co.	150.00	1-7-38
		<u>\$4,500.00</u>		<u>\$1,825.00</u>	

Sold To	Per	Selling Price	Profit	<u>INTEREST</u>			
				<u>6-15-35</u>	<u>12-15-35</u>	<u>6-15-36</u>	<u>12-15-37</u>
S. F.	\$1,000.00	\$250.00	\$ 50.00	\$ 15.00	\$ 15.00	\$ 15.00	
S. F.	500.00	125.00	50.00	7.50	7.50	7.50	
S.P.	1,000.00	250.00					\$ 15.00
S. F.	500.00	75.00					7.50
S. F.	500.00	75.00					7.50
S. F.	1,000.00	150.00					15.00
	<u>\$4,500.00</u>	<u>\$955.00</u>	<u>\$100.00</u>	<u>\$ 22.50</u>	<u>\$ 22.50</u>	<u>\$ 22.50</u>	<u>\$ 45.00</u>
		100.00					
		<u>\$105.00</u>					
				Total Interest			\$ 112.50

Schedule Sh.

Date	Security No.	Par	Bought From	Cost
8-31-32	D 208	\$ 500.00	Original Holding	\$ 500.00
9-31-33	D 100	500.00	Col. Sec. Co.	500.00
"	D 101	500.00	"	500.00
12-31-34	D 178	500.00	P.W.D. Chairman	255.00
"	D 178	500.00	"	255.00
"	D 234	500.00	"	255.00
"	L 234	500.00	"	255.00
"	M 434	1,000.00	"	510.00
"	M 438	1,000.00	"	510.00
11-30-37	M 441	1,000.00	P.W.D. Chairman	450.00
"	M 443	1,000.00	"	450.00
1-10-38	C 506	100.00	Harris & Co.	30.00
"	C 509	100.00	"	30.00
2-1-38	D 506	500.00	Col. Sec. Co.	280.00
"	M 448	1,000.00	"	440.00
"	C 477	100.00	"	44.00
"	C 492	100.00	"	44.00
"	C 498	100.00	"	44.00
"	C 578	100.00	"	44.00
2-1-40	M 429	1,000.00	Margaret H. Laoral	450.00
"	M 430	1,000.00	"	450.00
2-15-40	D 85	500.00	Col. Sec. Co.	202.50
2-18-40	D 178	500.00	Marie Walsh	275.00
"	D 236	500.00	"	225.00
"	M 482	1,000.00	"	450.00
2-21-40	D 84	500.00	Dr. B. Shal	300.00
2-2-41	M 410	1,000.00	Anna Latsoi	500.00
"	M 411	1,000.00	"	500.00
10-1-41	D 272	500.00	Winnie Leach	250.00
11-30-41	M 378	1,000.00	Superior Invest. Co.	500.00
12-1-41	D 344	500.00	A. J. Coleman	220.00
"	D 256	500.00	"	250.00
"	D 273	500.00	"	250.00
"	D 288	500.00	"	250.00
"	D 296	500.00	"	250.00
12-30-41	D 68	500.00	P.W.D. Chm.	250.00
"	M 368	1,000.00	"	500.00
"	M 374	1,000.00	"	500.00
"	M 437	1,000.00	"	500.00
4-22-42	C 474	100.00	Wesol Jure	50.00
"	C 475	100.00	"	50.00
"	C 476	100.00	"	50.00
4-27-42	D 75	500.00	Geo. H. McIntosh	250.00
		24,400.00	106	\$11,688.50

<u>Substituted</u> <u>Numbers</u>	<u>Interest</u> <u>4-15-36</u>	<u>10-15-36</u>	<u>4-15-37</u>	<u>10-15-37</u>	<u>4-15-38</u>
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\$ 240.00

\$ 252.00

\$ 252.00

108-2

AUMFEN STATION BUILDING CORP. - 1st MORTGAGE - Contd.

Schedule No.

<u>Date</u>	<u>Security No.</u>	<u>Par</u>	<u>Bought From</u>	<u>Cost</u>	<u>Profit On Sale</u>	<u>Substituted Numbers</u>	<u>Interest 4-15-36</u>	<u>10-15-36</u>	<u>4-15-37</u>
See Substitution Sheet		\$24,400.00	Forward	\$11,500.00			\$ 22.50	\$ 7.50	\$ 62.50

The following item represents the sale of a \$100.00 bond—the only sale from the bonds bought by the Trust.

200.00	P.E.D. Chairman	50.00	\$ 15.00	C	500			
				D	50		7.50	7.50
				D	350		7.50	7.50
				E	400			15.00

0	100
D	99
B	326
H	408
C	477
C	478
C	479
C	484
C	501
C	504
C	508
C	509
C	507
C	575
C	578
C	574
C	575
C	579
C	577
H	448
H	417
D	508
D	502
D	504
D	505
D	503
D	502

[illegible]

AUSTIN STATION BUILDING CORPORATION - 2nd MORTGAGE

Schedule B3

Date	Security No.		Par	Bought From	Cost	<u>INTEREST</u>	
						6-15-39	10-15-39
12-31-30	M	28	\$1,000.00	Original holding	<u>\$1,000.00</u>	\$ 7.50	\$10.00
6-15-39	M	13	1,000.00	E. Hjerpe	300.00	7.50	10.00
12-1-41	M	38	1,000.00	Jas. Netsinger	382.50		
"	M	39	1,000.00	" "	382.50		
"	M	41	1,000.00	" "	382.50		
"	M	42	1,000.00	" "	382.50		
			<u>\$5,000.00</u>		<u>\$1,750.00</u>	<u>\$15.00</u>	<u>\$20.00</u>

4-15-40	10-15-40	4-15-41	10-15-41	4-15-42	10-15-42	4-15-43
\$10.00	\$10.00	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00
10.00	10.00	15.00	15.00	15.00	15.00	15.00
				15.00	15.00	15.00
				15.00	15.00	15.00
				15.00	15.00	15.00
				15.00	15.00	15.00
\$20.00	\$20.00	\$30.00	\$30.00	\$30.00	\$30.00	\$30.00
TOTAL INTEREST						\$405.00

100-1

SHENY POST OFFICE BUILDING CORP. - 1ST MORTGAGE

Schedule II

<u>DATE</u>	<u>SECURITY NO.</u>	<u>PAY</u>	<u>BOUGHT BY</u>
8-12-36	N 16	\$1,000.00	Col. Sec. Co.
"	N 18	1,000.00	"
6-17-36	N 11	1,000.00	H. F. De Light
6-19-36	N 17	1,000.00	Knoland & Co.
10-19-37	D 22	500.00	Weinross & Co.
"	D 23	500.00	"
1-24-38	D 9	500.00	Col. Sec. Co.
"	D 30	500.00	"
2-26-41	D 20	500.00	Louis Suttachini
"	N 8	1,000.00	"
"	N 10	1,000.00	"
		<u>\$8,500.00</u>	

SHENY POST OFFICE BUILDING CORP. - 2ND MORTGAGE

11-30-30	D 27	500.00	Original holding
"	D 28	500.00	"
"	D 29	500.00	"
"	D 30	500.00	"
10-30-37	D 11	500.00	P.H.B. Chairman
7-22-43	D 1	500.00	Borwyn P.O. Bldg. Corp.
"	D 2	500.00	"
"	D 3	500.00	"
"	D 4	500.00	"
"	D 5	500.00	"
"	D 6	500.00	"
"	D 7	500.00	"
"	D 8	500.00	"
"	D 9	500.00	"
"	D 10	500.00	"
"	D 11	500.00	"
"	D 12	500.00	"
"	D 13	500.00	"
"	D 14	500.00	"
"	D 15	500.00	"
"	D 16	500.00	"
"	D 17	500.00	"
"	D 18	500.00	"
"	D 19	500.00	"
"	D 20	500.00	"
"	D 21	500.00	"
		<u>\$7,000.00</u>	

COST	ACCUMULATED INTEREST PAID	INTEREST BACK INTEREST	
		RECEIVED	
		6-1-37	12-15-37
\$ 200.00	\$ 1.25	\$ 75.00	\$15.00
200.00	1.25	75.00	15.00
200.00		75.00	15.00
200.00		75.00	15.00
125.00			7.50
125.00			7.50
100.00	.75		
100.00	.75		
175.00	5.19		
250.00	6.25		
250.00	6.25		
<u>42,150.00</u>	<u>20.35</u>	<u>\$300.00</u>	<u>\$75.00</u>

500.00	\$ 45.75	25.00	5.00
500.00	45.75	25.00	5.00
500.00	45.75	25.00	5.00
500.00	45.75	25.00	5.00
<u>25.00</u>			5.00
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<u>11,640.00</u>	<u>\$195.30</u>	<u>\$100.00</u>	<u>\$25.00</u>

<u>6-15-38</u>	<u>12-15-38</u>	<u>6-15-39</u>	<u>12-15-39</u>	<u>6-15-40</u>	<u>12-15-40</u>	<u>6-15-41</u>	<u>12-15-41</u>	<u>6-15-42</u>
\$15.00	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00	\$ 15.00	\$ 15.00	\$ 15.00
15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00
15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00
15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00
7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50
7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50
7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50
7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50
						7.50	7.50	7.50
						15.00	15.00	15.00
						15.00	15.00	15.00

<u>\$90.00</u>	<u>\$90.00</u>	<u>\$90.00</u>	<u>\$90.00</u>	<u>\$90.00</u>	<u>\$90.00</u>	<u>\$127.50</u>	<u>\$127.50</u>	<u>\$127.50</u>
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Total Interest \$1,377.47

5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00
5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00
5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00
5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00
5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00

<u>\$25.00</u>	<u>\$25.00</u>	<u>\$25.00</u>	<u>\$25.00</u>	<u>\$25.00</u>	<u>\$25.00</u>	<u>\$25.00</u>	<u>\$25.00</u>
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Total Interest \$520.00

6748 CHANDLER AVE., FOLLETT CORP. - 1ST MORTGAGE

Schedule 22

The bonds of this issue are registered bonds without coupons, registered by the Chicago Title & Trust Co., Trustee.

At June 1, 1938 the Trust owned \$44,100.00 which are carried at par. They were acquired at the time of the formation of the Trust by exchange of Trust shares of beneficial interest for the bonds. The details of this holding are as follows:

Nos. 133/27	Registered Geo. H. Andresen	- 26 bonds	@ 500.00
283	do do	'1	@ 100.00
233/42	Re-registered Paul E. Larrew	10	@ 100.00
319/21-327 - 347/72	Registered Geo. H. Andresen	20	@ 1,000.00

Total Original Holding

Bought 4-11-38 from H. Johnson

Nos. 254/65 - 10 @ 100.00 exchanged with corporation for

Nos. 110/11 Registered Cath. Higgins 2 @ 500.00

<u>PAY</u>	<u>COST</u>	<u>INTEREST</u>	
		11-1-37 paid 4-15-38 \$45,100.00 @ 1%	441.00
		11-1-38 paid 2-15-39 \$45,100.00 @ 1%	441.00
		11-1-39 \$45,100.00 @ 1%	451.00
\$15,000.00		11-1-40 \$45,100.00 @ 1%	676.50
100.00		11-1-41 \$45,100.00 @ 2%	1353.00
1,000.00		11-1-42 \$45,100.00 @ 3%	1353.00
<u>50,000.00</u>			
<u>44,100.00</u>	<u>44,100.00</u>	Total Interest	<u>4715.50</u>
1,000.00	240.00		

DEVISION AND LAVERGNE BUILDING CORPORATION - 1st MORTGAGE

Schedule E. F.

Date	Security No.	Par	Bought From	Cost	Accrued Interest Paid	Substituted Bonds
11-1-36	D 124	\$500.00	F. E. D. Chairman	\$475.00	-	
"	D 125	\$500.00	"	\$475.00	-	
"	D 126	\$500.00	"	\$475.00	-	
"	D 127	\$500.00	"	\$475.00	-	
"	D 128	\$500.00	"	\$475.00	-	
"	D 129	\$500.00	"	\$475.00	-	
1-3-37	D 130	\$500.00	F. E. D. Chairman	\$475.00	-	
"	D 131	\$500.00	"	\$475.00	-	
"	D 132	\$500.00	"	\$475.00	-	
"	D 133	\$500.00	"	\$475.00	-	
"	D 134	\$500.00	"	\$475.00	-	
"	D 135	\$500.00	"	\$475.00	-	
1-19-37	H 137	1,000.00	Col. Sec. Co.	600.00	10.00	
"	H 138	1,000.00	"	600.00	10.07	
5-15-37	H 139	1,000.00	Kirstein & Co.	350.00	20.35	
11-30-37	C 30	100.00	F. E. D. Chairman	40.00	2.25	
"	C 31	100.00	"	40.00	2.25	
"	C 32	100.00	"	40.00	2.25	
"	C 33	100.00	"	40.00	2.25	
"	C 34	100.00	"	40.00	2.25	
"	D 136	\$500.00	"	\$500.00	11.25	
"	D 137	\$500.00	"	\$500.00	11.25	
"	D 138	\$500.00	"	\$500.00	11.25	
"	D 139	\$500.00	"	\$500.00	11.25	
"	D 140	\$500.00	"	\$500.00	11.25	
"	H 141	1,000.00	"	600.00	22.00	
1-27-41	D 21	\$500.00	Etelle Zimmerman	\$500.00	-	
"	D 22	\$500.00	"	\$500.00	-	
1-29-41	D 23	\$500.00	Ralph A. French	\$500.00	-	
4-17-41	D 24	\$500.00	Frances R. Fink	\$500.00	-	
6-21-41	D 25	\$500.00	Stephen Toole	\$500.00	-	
		<u>\$15,500.00</u>		<u>\$7,500.00</u>	<u>\$131.00</u>	

N 173

STATION F (POSTAL FACILITIES INC.) BND MORTGAGE

Schedule 2H.

<u>DATE</u>	<u>SECURITY NO.</u>	<u>PAY</u>	<u>BOUGHT FROM</u>	<u>COST</u>
Feb-1-38	C 8	\$ 100.00	Original Holding	\$ 100.00
"	C 9	100.00	"	100.00
"	C 14	100.00	"	100.00
"	C 15	100.00	"	100.00
"	C 16	100.00	"	100.00
"	C 17	100.00	"	100.00
"	C 18	100.00	"	100.00
"	C 19	100.00	"	100.00
"	C 20	100.00	"	100.00
"	C 30	100.00	"	100.00
"	C 31	100.00	"	100.00
"	C 32	100.00	"	100.00
"	C 34	100.00	"	100.00
"	C 39	100.00	"	100.00
"	C 40	100.00	"	100.00
"	C 41	100.00	"	100.00
"	C 42	100.00	"	100.00
"	C 43	100.00	"	100.00
"	C 52	100.00	"	100.00
"	C 53	100.00	"	100.00
"	C 55	100.00	"	100.00
"	C 56	100.00	"	100.00
"	C 67	100.00	"	100.00
"	C 74	100.00	"	100.00
"	C 75	100.00	"	100.00
"	C 76	100.00	"	100.00
"	C 77	100.00	"	100.00
"	C 78	100.00	"	100.00
"	C 79	100.00	"	100.00
"	C 80	100.00	"	100.00
"	C 82	100.00	"	100.00
"	C 83	100.00	"	100.00
"	C 84	100.00	"	100.00
"	C 85	100.00	"	100.00
"	C 86	100.00	"	100.00
"	C 87	100.00	"	100.00
"	C 88	100.00	"	100.00
"	C 98	100.00	"	100.00
"	D101	500.00	"	500.00
"	D102	500.00	"	500.00
"	D103	500.00	"	500.00
"	D104	500.00	"	500.00
		<u>\$5,500.00</u>		<u>\$5,500.00</u>

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STATISTICAL FACILITIES, IS.) End 105-122 - (cont'd.)

Siwale 2H.

DATE	NO.	PAID	RECEIVED FROM	CST
To C-1-35	M 241	446,800.00	Forward	446,800.00
"	M 242	1,000.00	Original holding	1,000.00
"	M 243	1,000.00	"	1,000.00
"	M 244	1,000.00	"	1,000.00
"	M 245	1,000.00	"	1,000.00
"	M 246	1,000.00	"	1,000.00
"	M 247	1,000.00	"	1,000.00
"	M 248	1,000.00	"	1,000.00
"	M 249	1,000.00	"	1,000.00
"	M 250	1,000.00	"	1,000.00
"	M 251	1,000.00	"	1,000.00
"	M 252	1,000.00	"	1,000.00
"	M 253	1,000.00	"	1,000.00
"	M 254	1,000.00	"	1,000.00
"	M 255	1,000.00	"	1,000.00
"	M 256	1,000.00	"	1,000.00
"	M 257	1,000.00	"	1,000.00
"	M 258	1,000.00	"	1,000.00
"	M 259	1,000.00	"	1,000.00
"	M 260	1,000.00	"	1,000.00
"	M 261	1,000.00	"	1,000.00
"	M 262	1,000.00	"	1,000.00
"	M 263	1,000.00	"	1,000.00
"	M 264	1,000.00	"	1,000.00
"	M 265	1,000.00	"	1,000.00
"	M 266	1,000.00	"	1,000.00
"	M 267	1,000.00	"	1,000.00
"	M 268	1,000.00	"	1,000.00
"	M 269	1,000.00	"	1,000.00
"	M 270	1,000.00	"	1,000.00
"	M 271	1,000.00	"	1,000.00
"	M 272	1,000.00	"	1,000.00
"	M 273	1,000.00	"	1,000.00
"	M 274	1,000.00	"	1,000.00
"	M 275	1,000.00	"	1,000.00
"	M 276	1,000.00	"	1,000.00
"	M 277	1,000.00	"	1,000.00
"	M 278	1,000.00	"	1,000.00
"	M 279	1,000.00	"	1,000.00
"	M 280	1,000.00	"	1,000.00
"	M 281	1,000.00	"	1,000.00
"	M 282	1,000.00	"	1,000.00
"	M 283	1,000.00	"	1,000.00
"	M 284	1,000.00	"	1,000.00
"	M 285	1,000.00	"	1,000.00
"	M 286	1,000.00	"	1,000.00
"	M 287	1,000.00	"	1,000.00
"	M 288	1,000.00	"	1,000.00
"	M 289	1,000.00	"	1,000.00
"	M 290	1,000.00	"	1,000.00
"	M 291	1,000.00	"	1,000.00
"	M 292	1,000.00	"	1,000.00
"	M 293	1,000.00	"	1,000.00
"	M 294	1,000.00	"	1,000.00
"	M 295	1,000.00	"	1,000.00
"	M 296	1,000.00	"	1,000.00
"	M 297	1,000.00	"	1,000.00
"	M 298	1,000.00	"	1,000.00
"	M 299	1,000.00	"	1,000.00
"	M 300	1,000.00	"	1,000.00
"	M 301	1,000.00	"	1,000.00
"	M 302	1,000.00	"	1,000.00
"	M 303	1,000.00	"	1,000.00
"	M 304	1,000.00	"	1,000.00
"	M 305	1,000.00	"	1,000.00
"	M 306	1,000.00	"	1,000.00
"	M 307	1,000.00	"	1,000.00
"	M 308	1,000.00	"	1,000.00
"	M 309	1,000.00	"	1,000.00
"	M 310	1,000.00	"	1,000.00
"	M 311	1,000.00	"	1,000.00
"	M 312	1,000.00	"	1,000.00
"	M 313	1,000.00	"	1,000.00
"	M 314	1,000.00	"	1,000.00
"	M 315	1,000.00	"	1,000.00
"	M 316	1,000.00	"	1,000.00
"	M 317	1,000.00	"	1,000.00
"	M 318	1,000.00	"	1,000.00
"	M 319	1,000.00	"	1,000.00

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STATION F (FEDERAL FACILITIES, INC.) 1ST MORTGAGE

Exhibit 2 g

<u>Date</u>	<u>Security No.</u>	<u>PAR</u>	<u>Bought From</u>	<u>Cost</u>
10-17-35	H - 05	1,000.00	Cal. Sec. Co.	405.00
10-17-35		1,000.00	Cal. Sec. Co.	407.00
10-17-35	H 117	1,000.00	Cal. Sec. Co.	405.00
10-17-35	H 421	1,000.00	Cal. Sec. Co.	405.00
10-17-35	B 150	500.00	Hickney & Co.	202.00
10-17-35	B 151	500.00	" " "	202.00
10-17-35		1,000.00	P.E.D. Cln	200.00
10-17-35		1,000.00	" " "	200.00
10-17-35		1,000.00	P.E.D. Cln	200.00
10-17-35		1,000.00	" " "	200.00
10-17-35		1,000.00	" " "	200.00
10-17-35	B 152	500.00	Stein Brosman & Co.	204.25
10-17-35	H 114	500.00	Cal. Sec. Co.	200.00
10-17-35	H 06	1,000.00	Cal. Sec. Co.	200.00
10-17-35	H 07	1,000.00	" " "	200.00
10-17-35	H 08	1,000.00	" " "	200.00
10-17-35	B 153	500.00	Josephine Barnister	200.00
10-17-35	H 115	1,000.00	Cal. Sec. Co.	200.00
10-17-35	H 116	1,000.00	Cal. Sec. Co.	200.00
10-17-35	H 118	1,000.00	" " "	200.00
10-17-35	B 154	1,000.00	Wm. F. Moore & Co.	200.00
10-17-35	B 155	1,000.00	" " "	200.00
10-17-35	B 156	1,000.00	" " "	200.00
		<u>11,500.00</u>		<u>11,000.00</u>

* B 50 and a check given for H 114

Accrued
Interest
Paid

Since interest on this issue is paid by
an outside paying agent, we are unable
to identify the bond numbers of coupons collected.

	2-1-55 - 5% on \$ 2,000.00	\$ 672.50
	2-1-55 - 1-3/4% 11,000.00	192.50
	2-1-55 - 1-5/4% 12,000.00	120.00
	2-1-55 - 1-5/4% 12,500.00	223.75
	2-1-55 - 1-5/4% 21,500.00	576.25
	2-1-55 " "	576.25
\$.75	2-1-61 " "	576.25
4.57	2-1-61 " "	576.25
	2-1-62 " "	576.25
	2-1-62 " "	576.25
1.00	2-1-62 " "	576.25
0.07	2-1-63 " "	576.25
0.07	2-1-63 " "	576.25
12.25	2-1-63 " "	576.25
12.25		
12.25		

\$ 61.50

\$ 4,806.75

61.50

Total Interest

\$ 4,868.25

STATION P (POSTAL FACILITIES, INC.) 2nd MORTGAGE (Cont'd.)

Schedule 2B.

DATE	SECURITY NO.	PAR	BOUGHT FROM	COST	SUBSTITUTED NUMBERS	INTEREST PAID	8-1-58
12-18-38	D 168	\$1,500.00	Forward	\$180.00		\$1,279.50	\$421.50
"	D 170	500.00	Makler Bros.	75.00			
"	M 345	500.00	"	75.00			
10-4-39	C 97	1,000.00	"	150.00			
		100.00	B. R. Abbey	15.00			
					M 337		5.00
					M 336		
					D 188		
					D 189		
		<u>\$3,000.00</u>		<u>\$465.00</u>		<u>\$1,279.50</u>	<u>\$424.00</u>

*This payment should have been \$426.50. Check for \$2.50 received in 1944.

<u>8-1-59</u>	<u>8-1-59</u>	<u>8-1-60</u>	<u>8-1-60</u>	<u>8-1-61</u>	<u>8-1-61</u>	<u>8-1-62</u>	<u>8-1-62</u>	<u>8-1-63</u>	<u>8-1-63</u>
\$426.50	\$426.50	\$416.50	\$425.50	\$426.50	\$426.50	\$426.50	\$426.50	\$425.50	\$426.50
2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50
2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50
5.00	5.00		5.00	5.00	5.00	5.00	5.00	5.00	5.00
		.50	.50	.50	.50	.50	.50	.50	.50
5.00		5.00							
5.00		5.00							
2.50		2.50							
2.50		2.50							
<hr/>									
\$451.50	\$436.50	\$437.00	\$437.00	\$437.00	\$437.00	\$437.00	\$437.00	\$437.00	\$437.00
<hr/>									

Total Interest \$6,087.50

GRAND RAPIDS PARCEL POST BUILDING CORP. - 1st MORTGAGE

Schedule 21

DATE	SECURITY NO.	PAY	BOUGHT FROM	COST	ACCUMULATED INTEREST RECEIVED
6-16-35	B 12	500.00	Harwood & Co.	\$ 500.00	
7-2-35	B 12	500.00	Sold to S.F.	500.00	\$ 5.00
8-22-40	W 1	<u>1,000.00</u>	1st National Bank	<u>500.00</u>	
"	B 20	1,000.00		500.00	
"	B 20	<u>1,000.00</u>		<u>500.00</u>	
		<u>\$3,000.00</u>		<u>\$1,500.00</u>	<u>\$ 5.00</u>

GRAND RAPIDS PARCEL POST BUILDING CORP. - 2nd MORTGAGE

6-21-35	B 1	500.00	Original Holding	500.00
"	B 2	500.00	" "	500.00
"	B 4	<u>500.00</u>	" "	<u>500.00</u>
4-6-39	B 14	500.00	Cal. Sav. Co.	100.00
"	B 18	500.00	" "	100.00
"	B 20	500.00	" "	100.00
		<u>\$1,500.00</u>		<u>500.00</u>

INTEREST

THESE ARE REGISTERED BONDS.

INTEREST IS PAID TO REGISTERED HOLDERS BY THE TRUSTEE

7-15-40	\$ 50.00	1-15-42	\$ 50.00	7-15-45	\$50.00
1-15-41	50.00	7-15-42	50.00		
7-15-41	50.00	1-15-43	50.00		
	<hr/>		<hr/>		<hr/>
	\$150.00		\$150.00		\$50.00
	<hr/>		<hr/>		<hr/>
TOTAL INTEREST					\$425.00

INTEREST

These are registered bonds

Interest is paid to registered holders by the Corporation.

1-15-41	45.00	7-15-42	45.00
7-15-41	45.00	1-15-43	45.00
1-15-42	45.00	7-15-43	45.00

\$135.00

\$135.00

TOTAL INTEREST

\$270.00

*Overpayment of \$7.50 should have gone to F.E.D. Chairman.
Payment made in 1944.

IN FULL PAYMENT OF THE FIRST \$100.00 - 1st \$100.00

Schedule 2:

DATE	CO.	LOT	AMOUNT	BOUGHT FROM	COST
11-30-30	D	8	500.00	Original Holding	500.00
5- 8-36	D	47	500.00	P. H. D./ Carl I. Custin & Co.	50.00
"	D	48	500.00	"	50.00
8-11-37	D	60	500.00	Knoland & Company	27.80
12-22-37	D	28	500.00	New York Trust Company	30.00
"	D	30	500.00	"	30.00
"	D	54	500.00	"	30.00
"	D	55	500.00	"	30.00
"	D	56	500.00	"	30.00
"	D	58	500.00	"	30.00
"	M	61	1,000.00	"	60.00
"	M	75	1,000.00	"	60.00
"	M	78	1,000.00	"	60.00
4-22-42	D	2	500.00	A. A. Harnet & Company	50.00
"	D	3	500.00	"	50.00
8-14-42	D	32	500.00	Mr. Kherle	50.00
"	D	45	500.00	"	50.00
"	M	63	1,000.00	"	100.00
"	M	68	1,000.00	"	100.00
10-17-42	D	40	500.00	Major Mollis	50.00
12- 4-42	M	71	1,000.00	Mr. Friedlander	100.00
12-16-42	D	16	500.00	Minnie L. Leach	50.00
5- 2-43	D	13	500.00	Paul Brown & Company	50.00
<hr/>					
14,000.00					1,157.80

DIRECT

10-28-46

Back Coupon on D 8

45.00

122 AMERICAN SAVINGS & STATION, INC. - 1st MORTGAGE

Schedule B

Date	Security No.	Par	Bought From	Cost	Date	Par	Sold To	Price
10-25-36	155	\$ 800.00	Cal. Sav. Co.	\$ 40.00	12-24-36	\$ 800.00	P.O.B. Chirren	\$ 40.00
7-14-38	154	800.00	P.O.B./P.L. Austin & Co.	40.00	"	800.00	"	40.00
"	156	800.00	"	40.00	"	600.00	"	40.00
"	222	800.00	"	40.00	"	800.00	"	40.00
"	223	800.00	"	40.00	"	800.00	"	40.00
"	240	800.00	"	40.00	"	800.00	"	40.00
"	270	800.00	"	40.00	"	800.00	"	40.00
"	271	800.00	"	40.00	"	800.00	"	40.00
"	272	800.00	"	40.00	"	800.00	"	40.00
"	273	800.00	"	40.00	"	800.00	"	40.00
"	274	800.00	"	40.00	"	800.00	"	40.00
"	275	800.00	"	40.00	"	800.00	"	40.00
"	276	800.00	"	40.00	"	800.00	"	40.00
"	277	800.00	"	40.00	"	800.00	"	40.00
"	278	800.00	"	40.00	"	800.00	"	40.00
"	279	800.00	"	40.00	"	800.00	"	40.00
"	280	800.00	"	40.00	"	800.00	"	40.00
"	281	800.00	"	40.00	"	800.00	"	40.00
"	282	800.00	"	40.00	"	800.00	"	40.00
"	283	800.00	"	40.00	"	800.00	"	40.00
		<u>10,000.00</u>		<u>\$75.00</u>		<u>\$7,000.00</u>		<u>\$75.00</u>

CHAS. FAYE POST OFFICE BUILDING CORP. - 1st MORTGAGE - Contd.

Schedule B.

Date	No.	No.	Amount Due
		0	Original holding
1-1-34	1	1,000.00	1,000.00
1-1-34	1	1,000.00	1,000.00
1-1-34	1	1,000.00	1,000.00
1-1-34	1	1,000.00	1,000.00
		75,000.00	

F.B.D. / Carl E. Gustin & Co.

Fed. Res. Bank

[illegible]

[illegible]

12-1-37	6-1-38	12-1-38	6-1-39	12-1-39	6-1-40	12-1-40	6-1-41	12-1-41	6-1-42	12-1-42	6-1-43
<u>\$108.00</u>	<u>\$108.00</u>	<u>\$108.00</u>	<u>\$108.00</u>	<u>\$108.00</u>	<u>\$108.00</u>	<u>\$108.00</u>	<u>\$108.00</u>	<u>\$108.00</u>	<u>\$108.00</u>	<u>\$108.00</u>	<u>\$108.00</u>
15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00
15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00
15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00
										7.50	7.50
											7.50
											7.50
											7.50
										7.50	
											7.50
<u>\$344.80</u>	<u>\$154.70</u>	<u>\$154.50</u>	<u>\$154.80</u>	<u>\$154.80</u>	<u>\$154.80</u>	<u>\$154.80</u>	<u>\$154.80</u>	<u>\$154.80</u>	<u>\$154.80</u>	<u>\$154.80</u>	<u>\$154.80</u>

Total interest

12.967.50

PARKVIEW MANOR BUILDING CO. 1st MORTGAGE AND CLASS A STOCK.

This issue was changed by a reorganization by reducing the mortgage by 40% and issue of Class A Stock for the 40% reduction.

Schedule H H.

Date	Seed No	Par	Share Stock	Bought From Original Holding	Cost	INTEREST IN-3-37
10-1-37	259	\$ 80.00	.40		\$ 100.00	.60
"	262	80.00	.40		100.00	.60
"	264	80.00	.40		100.00	.60
"	267	80.00	.40		100.00	.60
"	268	80.00	.40		100.00	.60
"	269	80.00	.40		100.00	.60
"	270	80.00	.40		100.00	.60
"	271	80.00	.40		100.00	.60
"	273	80.00	.40		100.00	.60
"	277	80.00	.40		100.00	.60
"	280	80.00	.40		100.00	.60
"	281	80.00	.40		100.00	.60
"	283	80.00	.40		100.00	.60
"	284	80.00	.40		100.00	.60
"	288	80.00	.40		100.00	.60
"	288	80.00	.40		100.00	.60
"	290	80.00	.40		100.00	.60
"	291	80.00	.40		100.00	.60
"	292	80.00	.40		100.00	.60
"	296	80.00	.40		100.00	.60
"	297	80.00	.40		100.00	.60
"	298	80.00	.40		100.00	.60
"	308	80.00	.40		100.00	.60
"	310	80.00	.40		100.00	.60
"	311	80.00	.40		100.00	.60
"	312	80.00	.40		100.00	.60
"	313	80.00	.40		100.00	.60
"	314	80.00	.40		100.00	.60
"	319	80.00	.40		100.00	.60
"	327	80.00	.40		100.00	.60
"	328	80.00	.40		100.00	.60
"	329	80.00	.40		100.00	.60
"	335	80.00	.40		100.00	.60
"	336	80.00	.40		100.00	.60
"	342	80.00	.40		100.00	.60
"	343	80.00	.40		100.00	.60
"	344	80.00	.40		100.00	.60
"	345	80.00	.40		100.00	.60
"	422	80.00	.40		100.00	.60
"	425	80.00	.40		100.00	.60
"	427	80.00	.40		100.00	.60
"	426	80.00	.40		100.00	.60
		<u>\$2,520.00</u>	<u>18.80</u>		<u>\$4,200.00</u>	<u>\$ 25.20</u>

Note
Last column cut off in all
available copies

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Schedule M.

Date	Bond No.	Par	Shares Stock	Bought From	Cost	INTEREST 11-1-37	6-1-38
To 6-1-38	638	\$2,350.00	16.50	Forward	\$4,300.00	\$ 25.50	\$25.50
"	645	80.00	.40	Original Holding	100.00	.80	.80
"	651	80.00	.40	"	100.00	.80	.80
"	654	80.00	.40	"	100.00	.80	.80
"	657	80.00	.40	"	100.00	.80	.80
"	666	80.00	.40	"	100.00	.80	.80
"	674	80.00	.40	"	100.00	.80	.80
"	675	80.00	.40	"	100.00	.80	.80
"	676	80.00	.40	"	100.00	.80	.80
"	685	80.00	.40	"	100.00	.80	.80
"	688	80.00	.40	"	100.00	.80	.80
"	689	80.00	.40	"	100.00	.80	.80
"	715	80.00	.40	"	100.00	.80	.80
"	725	80.00	.40	"	100.00	.80	.80
"	750	80.00	.40	"	100.00	.80	.80
"	759	80.00	.40	"	100.00	.80	.80
"	760	80.00	.40	"	100.00	.80	.80
"	767	80.00	.40	"	100.00	.80	.80
"	769	80.00	.40	"	100.00	.80	.80
"	780	80.00	.40	"	100.00	.80	.80
"	782	80.00	.40	"	100.00	.80	.80
"	135	500.00	2.	"	500.00	3.00	3.00
"	137	500.00	2.	"	500.00	3.00	3.00
"	138	500.00	2.	"	500.00	3.00	3.00
"	139	500.00	2.	"	500.00	3.00	3.00
"	140	500.00	2.	"	500.00	3.00	3.00
"	141	500.00	2.	"	500.00	3.00	3.00
"	142	500.00	2.	"	500.00	3.00	3.00
"	143	500.00	2.	"	500.00	3.00	3.00
"	144	500.00	2.	"	500.00	3.00	3.00
"	145	500.00	2.	"	500.00	3.00	3.00
"	146	500.00	2.	"	500.00	3.00	3.00
"	147	500.00	2.	"	500.00	3.00	3.00
"	148	500.00	2.	"	500.00	3.00	3.00
"	149	500.00	2.	"	500.00	3.00	3.00
"	150	500.00	2.	"	500.00	3.00	3.00
"	152	500.00	2.	"	500.00	3.00	3.00
"	155	500.00	2.	"	500.00	3.00	3.00
"	157	500.00	2.	"	500.00	3.00	3.00
"	158	500.00	2.	"	500.00	3.00	3.00
		\$9,840.00	85.00		\$10,600.00	\$ 59.40	\$59.40

[illegible]

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PART VI. CANON UTILITY CO.,-1ST, MICHIGAN AND LIT A SPEC. 2nd ed.

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[illegible]

TOTAL 1.740 1. 18,751.20

PARKVIEW MANOR BUILDING CO. - CLASS B STOCK.

This stock represents the old second mortgages bonds converted by the reorganization.

Schedule B H.

<u>DATE</u>	<u>SHARES STOCK</u>	<u>BOUGHT FROM</u>	<u>COST</u>
to 6-1-35	8118	Original holding	\$811300.00
8-16-36	589	Cal. Sec. Co.	1187.00
3-14-39	30	Cal. Sec. Co.	60.00
	<hr/>		<hr/>
	849		1217.00
	<hr/>		<hr/>

Schedule 20

The bonds of this issue are registered bonds without coupons, registered by the Chicago Title and Trust Co., Trustee.

At June 1, 1935 the Trust owned \$65,400.00 which are carried at par. They were acquired at the time of the formation of the Trust by exchange of Trust shares of beneficial interest for the bonds. The details of this holding are as follows:

Reg. 104/34 Registered Geo. H. Andresen - 29 bonds @ \$100.00
 304/427-429 Registered Geo. H. Andresen - 1214 \$500.00

Bought Since June 1, 1935

<u>DATE</u>	<u>BOND NO.</u>	<u>BOUGHT FROM</u>	<u>REGISTERED</u>
10-25-35	182	Anderson and Flets	L. H. Brunton
12-22-42	220	Wheeler & Co.	Edna L. McCarthy
"	221	"	"
"	222	"	"
"	223	"	"
"	224	"	"
"	225	"	"

32,900.00
80,500.00

63,400.00

63,400.00

500.00
500.00
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500.00
500.00
500.00

125.00
125.00
125.00
125.00
125.00
125.00
125.00

63,500.00

61,235.00

132-1

8-1-35	63,400.	@ 2 1/2%	11,585.00
8-1-36	63,400.	@ 1 1/2%	951.00
8-1-37	63,400.	@ 3%	1,902.00
8-1-38	63,400.	@ 3%	1,902.00
8-1-39	63,900.	@ 3%	1,917.00
8-1-40	63,900.	@ 2%	1,275.00
8-1-41	63,900.	@ 3%	1,917.00
8-1-42	63,900.	@ 3%	1,917.00
8-1-43	66,900.	@ 3%	2,007.00
Total Interest			15,578.00

At June 1, 1935 the Trust owned \$34,800.00 which are carried at par. They were acquired at the time of the formation of the Trust by exchange of Trust shares of beneficial interest for the bonds. The details of this holding are as follows:

Dec. 15/34 Registered	Dec. H. Anderson	12 bonds	@ 100.00
144/121	do	76	@ 500.00
412/24	do	18	@ 1000.00

TRANSACTIONS SINCE JUNE 1, 1935

<u>DATE</u>	<u>BOND NO.</u>	<u>BOUGHT FROM</u>	<u>REGISTERED</u>
11-1-35	25	Graham & Co.	Dick Cooke
"	26	"	"
"	27	"	Donald Cooke
"	28	"	T. G. Cooke
"	29	"	"
"	30	"	"
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134 And afterwards on, to wit, the 15th day of May, 1944 came the Securities And Exchange Commission by its attorneys and filed in the Clerk's office of said Court its certain Objections To The Final Report And Account of Paul E. Darrow, Trustee, covering The Period From April 25, 1935 to and including August 13, 1943, as Supplemented By Detailed Schedules Filed On February 11, 1944, And To The Application Of Said Trustee For Allowance Of Compensation, in Case No. 58334 in words and figures following, to wit:

135

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334) • •

OBJECTIONS OF THE SECURITIES AND EXCHANGE COMMISSION TO THE FINAL REPORT AND ACCOUNT OF PAUL E. DARROW, TRUSTEE, COVERING THE PERIOD FROM APRIL 25, 1935 TO AND INCLUDING AUGUST 13, 1943, AS SUPPLEMENTED BY DETAILED SCHEDULES FILED ON FEBRUARY 11, 1944, AND TO THE APPLICATION OF SAID TRUSTEE FOR ALLOWANCE OF COMPENSATION

Comes now the Securities and Exchange Commission and objects to the Final Report and Account of Paul E. Darrow, trustee, filed herein on October 15, 1943, and supplemented by Detailed Schedules filed on February 11, 1944, covering the period from April 25, 1935 to and including August 13, 1943, upon the following grounds:

1. The operating expenses as set forth in the Final Report and Account total \$121,910.15, whereas the same expenses as shown in the Detailed Supplementing Schedules total \$119,696.13, a reduction of \$2,214.02 by which amount the receipts are also shown to be decreased. Included in this latter figure are the sum of \$1,267.52 for office salaries, \$554.11 for Trustee's salary, and \$153.78 for rent.

2. The Detailed Supplementing Schedules reflect total interest of \$1,080 earned on United States Building Corporation second mortgage bonds held by the trustee,

whereas the summary contained therein sets forth the receipt of only \$980 by way of interest on these bonds.

3. The Detailed Supplementing Schedules disclose that in the purchasing and selling of securities by the 136 trustee of first mortgage bonds of Ferry Station Post Office, Inc., a profit was determined by taking the difference between the purchase price of a particular bond and the selling price of a different bond of the same issue in at least five separate instances. The same procedure was followed in determining profits in at least two transactions involving the purchase and sale of first mortgage bonds of United States Building Corporation.

4. The Detailed Schedules supplementing the Final Report and Account fail to show interest earned or accrued for several years on several of the bond holdings of the trustee in certain subsidiaries, among which are Columbus Parcel Post Building, Inc., North Halsted Post Office Building Corporation, Quincy Station Post Office Building Corporation, Roseland Building Corporation, South Side Post Office Service Building Corporation, 22nd Street Station Building Corporation, and Villa Building Corporation, and no explanation is contained in the Final Report and Account or Detailed Supplementing Schedules to account for the absence of such interest.

5. The Detailed Supplementing Schedules disclose that Paul E. Darrow, as trustee, has from time to time made unauthorized loans of trust funds to subsidiaries of the trust and in particular made loans to Roseland Building Corporation between the dates of October 1, 1939 and August 27, 1942 totaling \$1,450, of which amount the sum of \$630 has been repaid leaving an unpaid balance of \$820 owing by Roseland Building Corporation to Paul E. Darrow, as trustee.

6. The summary of operating expenses for the period covered by the Final Report and Account shows a total miscellaneous expense of \$1,413.10 which is entirely unexplained and not supported by any detailed schedule.

7. The trustee has purchased from time to time various securities from two of his employees, namely, Jacob 137 Kulp and Myrtle Johnson, who have also occupied a fiduciary relationship, and from Colonial Securities Company, a corporation owned or controlled by these employees, and also from associates or affiliates of these

two employees, a large number of bonds of subsidiary companies upon the sale of which to the trustee these employees have realized substantial profits for which the trustee has not accounted.

8. The trustee has retained in his employ on a salaried basis Jacob Kulp and Myrtle Johnson who have operated a securities business in the same suite of offices with the trustee during the period covered by this Final Report and Account, and said Jacob Kulp and Myrtle Johnson, through the operation of their securities business, have purchased and sold securities of the subsidiaries of the trust estate utilizing information gained by them in the fiduciary relations in which they occupied as employees of the trustee and have realized by such trading in these securities substantial profits for which the trustee has not accounted.

9. The Final Report and Account of Paul E. Darrow, as trustee, and the Detailed Supplementing Schedules filed in support thereof do not agree in numerous instances with the record of purchases and sales of securities by the trustee as set forth in the report filed herein on June 8, 1942 by Frederick B. Andrews, Certified Public Accountant, pursuant to order of Court.

10. The Final Report and Account fails to account for the omission of Paul E. Darrow, as trustee, as owner of all of the stock of Quincy Station Post Office Building Corporation to prosecute to a conclusion a cause of action against the members of the board of directors of said Quincy Station Post Office Building Corporation, including two of his employees, namely, Jacob Kulp and Myrtle Johnson, to recover the amount of a \$100,000 dividend illegally and improperly declared by resolution of said board of directors on November 22, 1930 and paid to Jacob Kulp on or about January 2, 1931. The declaration of said dividend was illegal and improper because the said corporation at the time had earnings or earned surplus of only \$26,924.40 available for dividends, and its payment to Jacob Kulp was wrongful and improper because at that time and prior thereto all of the stock of this corporation was beneficially owned by Federal Facilities Realty Trust and pledged to secure its outstanding Collateral Trust Gold Bonds.

11. No detailed information regarding the purchases and sales of bonds of subsidiary corporations by the "Paul

E. Darrow, Chairman Account" is included in either the Final Report and Account of Paul E. Darrow, trustee, or in the Detailed Schedules supplementing the Final Report and Account of Paul E. Darrow, trustee, as required by order of Court.

12. The Securities and Exchange Commission also objects to the allowance of any further compensation to Paul E. Darrow, as trustee, upon the ground that the interim fees heretofore received by him are ample compensation for all of the services which he has rendered, in view of the results accomplished, the size and ability of the estate to pay, and particularly in view of the conduct of the trustee in the administration of this estate.

Wherefore the Securities and Exchange Commission respectfully asks that the Final Report and Account of Paul E. Darrow, as trustee, be disapproved, that Paul E. Darrow be disallowed any further compensation, and that he and the surety on his bond be surcharged in such amounts as may upon a hearing be properly determined.

Thomas B. Hart

Thomas B. Hart

G. Gale Roberson

G. Gale Roberson

Leo J. Powers

Leo J. Powers

Attorneys for the Securities and
Exchange Commission.

139 And on the same day, to wit, the 15th day of May, 1944 came the Securities And Exchange Commission by its attorneys and filed in the Clerk's office of said Court its certain Objections To The Final Report And Account of Paul E. Darrow, Trustee, Covering The Period From June 1, 1935 to And Including August 13, 1943, As Supplemented By Detailed Schedules Filed On April 21, 1944, And To The Application Of Said Trustee For Allowance Of Compensation, In Case No. 58335, in words and figures following, to wit:

140

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58335) • •

OBJECTIONS OF THE SECURITIES AND EXCHANGE COMMISSION TO THE FINAL REPORT AND ACCOUNT OF PAUL E. DARROW, TRUSTEE, COVERING THE PERIOD FROM JUNE 1, 1935 TO AND INCLUDING AUGUST 13, 1943, AS SUPPLEMENTED BY DETAILED SCHEDULES FILED ON APRIL 21, 1944, AND TO THE APPLICATION OF SAID TRUSTEE FOR ALLOWANCE OF COMPENSATION

Comes now the Securities and Exchange Commission and objects to the Final Report and Account of Paul E. Darrow, trustee, filed herein on October 15, 1943, and supplemented by Detailed Schedules filed on April 21, 1944, covering the period from June 1, 1935, to and including August 13, 1943, upon the following grounds:

1. The operating expenses as set forth in the Final Report and Account total \$156,758.24, whereas the same expenses as shown in the Detailed Schedules total \$158,823.24, an increase of \$2,065.00 by which amount the receipts are also shown to be increased. This discrepancy of \$2,065.00 is reflected in the Detailed Schedules which show total net purchases of bonds of subsidiaries in the amount of \$49,534.25, whereas the Final Report and Account of Paul E. Darrow, trustee, indicates the expenditure of \$47,469.25 for the purchase of such bonds.

2. The Detailed Schedules supplementing the Final

Report and Account fail to show interest earned or accrued for several years on certain of the bondholdings 141 of the trustee in several subsidiaries, among which are Austin Station Building Corporation, Division and Lavergne Building Corporation, Postal Facilities, Inc. (Station F), Grand Rapids Parcel Post Building Corporation, LaGrange Post Office Building Corporation, and Parkview Manor Building Company, and no explanation is contained in the Final Report and Account or Detailed Schedules to account for the absence of such interest.

3. The Detailed Schedules disclose that Paul E. Darrow, as trustee, from time to time made unauthorized loans of trust funds to subsidiaries of the trust between the dates of January 7, 1936 and July 26, 1943, totalling \$76,015.50, of which amount the sum of \$69,515.50 was repaid, leaving an unpaid balance of \$6,500.00 as of August 13, 1943.

4. The trustee has purchased from time to time various securities from one of his employees, Myrtle Johnson, who has also occupied a fiduciary relationship, and from Colonial Securities Company, a corporation owned and controlled by said Myrtle Johnson and Jacob Kulp who were also employees of the trustee and occupied a fiduciary relationship, and also from associates or affiliates of said Myrtle Johnson and Jacob Kulp, a large number of bonds of subsidiary companies, upon the sale of which to the trustee these employees, Colonial Securities Company, and affiliates and associates of these employees have realized substantial profits for which the trustee has not accounted.

5. The trustee has retained in his employ on a salaried basis Jacob Kulp and Myrtle Johnson, who have operated a securities business in the same suite of offices with the trustee, during the period covered by this Final Report and Account, and said Jacob Kulp and Myrtle Johnson, through the operation of said securities business have purchased and sold securities of the subsidiaries of the 142 trust estate utilizing information gained by them in the fiduciary relationship which they occupied as employees of the trustee and have realized by such trading in these securities substantial profits for which the trustee has not accounted.

6. The Final Report and Account of Paul E. Darrow, as Trustee, and the Detailed Schedules filed in support thereof do not agree in numerous instances with the

record of purchases and sales of securities by the trustee as set forth in the Report dated June 24, 1942, and filed herein by Frederick B. Andrews, Certified Public Accountant, pursuant to order of Court.

7. No detailed information regarding the purchases and sales of bonds of subsidiary corporations by the "Paul E. Darrow, Chairman Account" is included in either the Final Report and Account of Paul E. Darrow, trustee, or in the Detailed Schedules supplementing the Final Report and Account of Paul E. Darrow, trustee, as required by order of Court.

8. The Securities and Exchange Commission also objects to the allowance of any further compensation to Paul E. Darrow, as trustee, upon the ground that the interim fees heretofore received by him are ample compensation for all of the services which he has rendered, in view of the results accomplished, the size and ability of the estate to pay, and particularly in view of the conduct of the trustee in the administration of this estate.

Wherefore the Securities and Exchange Commission respectfully asks that the Final Report and Account of Paul E. Darrow as Trustee, be disapproved, that Paul 143 E. Darrow be disallowed any further compensation, and that he and the surety on his bond be surcharged in such amounts as may upon hearing be properly determined.

Thomas B. Hart

Thomas B. Hart

G. Gale Roberson

G. Gale Roberson

Leo J. Powers

Leo J. Powers

Attorneys for Securities and Exchange Commission

144 And afterwards on, to wit, the 29th day of May, 1944 came the Successor Trustee, Stacy C. Mosser, by his attorneys and filed in the Clerk's office of said Court his certain Objections to the Final Report and Account of Paul E. Darrow, Trustee, as Supplemented by Detailed Schedules, Covering the Period From April 25, 1935, to August 13, 1943, and the Application of said Trustee for Allowance of Compensation, in the respective cases Numbered 58334 and 58335, in words and figures following, to wit:

145

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334) • •

OBJECTIONS OF STACY C. MOSSER, SUCCESSOR TRUSTEE, TO THE FINAL REPORT AND ACCOUNT OF PAUL E. DARROW, TRUSTEE, AS SUPPLEMENTED BY DETAILED SCHEDULES, COVERING THE PERIOD FROM APRIL 25, 1935 TO AUGUST 13, 1943 AND THE APPLICATION OF SAID TRUSTEE FOR ALLOWANCE OF COMPENSATION.

Stacy C. Mosser, successor trustee, objects to the final account of Paul E. Darrow, trustee, as supplemented by detailed schedules, covering the period from April 25, 1935, to and including August 13, 1943, and states in support of said objections as follows:

1. The item in said account described as "miscellaneous expense" is not itemized.
2. The final report is at variance with the supplemented detailed schedules.
3. The trustee made loans to subsidiary corporations in many instances without authority, which have not been repaid and which said claims are not set up as assets of this estate.
4. Interest received from United States Building Corporation 2nd Mortgage Bonds is set up in one portion of the report as \$1,080.00, and in another portion of said report as \$980.00.

5. The trustee permitted full time employees of the trust to engage in business ventures of their own, and from which the trustee did not receive any benefit.

146 6. The trustee permitted Myrtle Johnson and Jacob Kulp and their associates and affiliates, to occupy space in the office paid for by this estate for the purpose of carrying on their individual business, without payment to this estate of expenses incurred for said office space, telephone, stenographer, and other incidental expenses.

7. The Colonial Investment Company, a corporation, which was engaged in the business of purchasing and selling securities, was permitted to occupy space in the office of this estate without proper reimbursement for the use of said space, telephone, stenographer, and other incidental office expenses.

8. Myrtle Johnson and Jacob Kulp, and their associates and affiliates, while occupying a fiduciary relationship to this estate, obtained information concerning the financial condition of this estate and its subsidiary corporations which enabled said persons and corporations to deal in the securities of this estate and its subsidiaries, with a resultant profit to said persons and corporations, and a loss to this estate and its creditors.

9. The trustee permitted Jacob Kulp to engage in the insurance and real estate brokerage business to the detriment of this estate.

10. The trustee failed to account for a portion of the fees which he received as reorganization fees in the matter of the reorganization of the subsidiary corporations.

11. The trustee has failed to account for interest which was paid to him as trustee, or which he should have received on bonds owned by this estate, and on bonds purchased by his employees and their associates and affiliates.

12. The trustee purchased securities from his employees and their associates and affiliates, and permitted said persons and corporations to make a profit on said transactions, all of which said profits, together with interest on said securities should have been delivered up to this estate.

13. The trustee purchased securities and resold them at a profit to other than subsidiary corporations thereby increasing the indebtedness of said subsidiaries, and, ac-

ordingly, reducing the equitable interest of this estate in said subsidiaries.

14. The trustee failed to take the necessary action in the matter of the sale of bonds of subsidiaries of this trust and other securities, in the case of *Seligman v. Kulp, et al*, No. 35 S 11241, then pending in the Superior Court of Cook County, in furtherance of a plan to permit said securities to be purchased through a "dummy bidder" for later delivery through the agency of Max Levy, Sallie Levy, and Colonial Securities Company, to this estate, at a substantial profit to said intermediaries.

15. The trustee failed to keep proper books of account, thereby enabling his employees to engage in security transactions, the exact nature of which cannot be ascertained without great expense and loss to this estate.

16. All items of disbursements representing payment of salaries to Myrtle Johnson and Jacob Kulp, and other employees who stood any fiduciary relationship to this estate, and who engaged in the purchase or sale of securities, or otherwise derived profits, should be disallowed.

17. All items of disbursements representing salaries or fees paid to Paul E. Darrow, trustee, should be disallowed.

18. All items of expense for telephone, office rent, supplies, stenographer's services, etc. incurred, in whole or in part, for or by any person, firm or corporation other than this estate, should be disallowed.

19. Further compensation to Paul E. Darrow, trustee, should be denied.

148 20. No detailed accounting has been rendered showing the receipts and disbursements in the Paul E. Darrow Chairman account.

21. The objector adopts each and all of the objections heretofore filed on behalf of the Securities and Exchange Commission and expressly makes said objections a part hereof by reference.

This objection respectfully asks that the final report and account, as supplemented by detailed schedules, of Paul E. Darrow, Trustee, be disapproved, and that this court enter all necessary and proper orders to surcharge the said trustee and the surety on his bond for such sums of money as may be found due and owing to this estate upon a hearing of these objections.

Deming, Jarrett & Mulfinger
Attorneys for Stacy C. Mosser,
Successor Trustee.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58335) • •

OBJECTIONS OF STACY C. MOSSER, SUCCESSOR TRUSTEE, TO THE FINAL REPORT AND ACCOUNT OF PAUL E. DARROW, TRUSTEE, AS SUPPLEMENTED BY DETAILED SCHEDULES, COVERING THE PERIOD FROM APRIL 25, 1935 TO AUGUST 13, 1943, AND THE APPLICATION OF SAID TRUSTEE FOR ALLOWANCE OF COMPENSATION.

Stacy C. Mosser, successor trustee, objects to the final account of Paul E. Darrow, trustee, as supplemented by detailed schedules, covering the period from April 25, 1935 to and including August 13, 1943, and states in support of said objections as follows:

1. The item of \$1,688.12, and described in said account as "miscellaneous expense", is not itemized.
2. The final report is at variance with the supplemented detailed schedules in the matter of expenditures.
3. The trustee made loans to subsidiary corporations in many instances without authority, which have not been repaid and which said claims are not set up as assets of this estate.
4. The trustee permitted full time employees of the trust to engage in business ventures of their own, and from which the trustee did not receive any benefit.
5. The trustee permitted Myrtle Johnson and Jacob Kulp and their associates and affiliates, to occupy space in the office paid for by this estate for the purpose of carrying on their individual business, without payment to this estate of expenses incurred for said office space, telephone, stenographer, and other incidental expenses.
- 150 6. The Colonial Investment Company, a corporation, which was engaged in the business of purchasing and selling securities, was permitted to occupy space in the offices of this estate without proper reimbursement for the use of said space, telephone, stenographer, and other incidental office expenses.
7. Myrtle Johnson and Jacob Kulp, and their associates and affiliates, while occupying a fiduciary relationship to this estate, obtained information concerning the

financial condition of this estate and its subsidiary corporations which enabled said persons and corporations to deal in the securities of this estate and its subsidiaries, with a resultant profit to said persons and corporations, and a loss to this estate and its creditors.

8. The trustee permitted Jacob Kulp to engage in the insurance and real estate brokerage business to the detriment of this estate.

9. The trustee failed to account for a portion of the fees which he received as reorganization fees in the matter of the reorganization of the subsidiary corporations.

10. The trustee has failed to account for interest which was paid to him as trustee, or which he should have received on bonds owned by this estate, and on bonds purchased by his employees and their associates and affiliates.

11. The trustee purchased securities from his employees and their associates and affiliates, and permitted said persons and corporations to make profit on said transactions, all of which said profits, together with interest on said securities, should have been delivered up to this estate.

12. The trustee purchased securities and resold them at a profit to other than subsidiary corporations thereby increasing the indebtedness of said subsidiaries, and, accordingly, reducing the equitable interest of this estate in said subsidiaries.

13. The trustee failed to take the necessary action in the matter of the sale of bonds of subsidiaries of this trust and other securities, in the case of *Seligman v. Kulp, et al*, No. 35 S 11241, then pending the Superior Court of Cook County, in furtherance of a plan to permit said securities to be purchased through a "dummy bidder" for later delivery through the agency of Max Levy, Sallie Levy, and Colonial Securities Company, to this estate, at a substantial profit to said intermediaries.

14. The trustee failed to keep proper books of account, thereby enabling his employees to engage in security transactions, the exact nature of which cannot be ascertained without great expense and loss to this estate.

15. All items of disbursements representing payment of salaries to Myrtle Johnson and Jacob Kulp, and other employees who stood any fiduciary relationship to this estate and who engaged in the purchase or sale of securities, or otherwise derived profits, should be disallowed.

16. All items of disbursements representing salaries or fees paid to Paul E. Darrow, trustee, should be disallowed.

17. All items for expense for telephone, office rent, supplies, stenographer's services, etc. incurred, in whole or in part, for or by any person, firm or corporation other than this estate, should be disallowed.

18. Further compensation to Paul E. Darrow, trustee, should be denied.

19. No detailed accounting has been rendered showing the receipts and disbursements in the Paul E. Darrow Chairman account.

152 20. The objector adopts each and all of the objections heretofore filed on behalf of the Securities and Exchange Commission and expressly makes said objections a part hereof by reference.

This objector respectfully asks that the final report and account, as supplemented by detailed schedules, of Paul E. Darrow, trustee, be disapproved, and that this court enter all necessary and proper orders to surcharge the said trustee and the surety on his bond for such sums of money as may be found due and owing to this estate upon a hearing of these objections.

Deming, Jarrett & Mulfinger
Attorneys for Stacy C. Mosser,
Successor Trustee.

153 And afterwards, to wit, on the 20th day of July, 1944, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly District Judge, appears the following entries, in the respective cases numbered 58334 and 58335, to wit:

154

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334) • •

ORDER

This matter coming on to be heard upon the final report and account of Paul E. Darrow, the former Trustee

herein, said final report and account being filed herein on October 15, 1943, and the supplementary schedules to said final report and account filed herein on February 11, 1944;

And it appearing to the court that notice hereof has been served upon all parties to this cause and that all parties herein are present in Court or represented by counsel;

And it further appearing to this Court that objections to the said final report and account as supplemented have been filed herein by the Securities and Exchange Commission, Stacy C. Mosser, the Successor-Trustee herein, and John W. Guild, as Successor-Trustee under that indenture dated October 1, 1929;

It Is Therefore Hereby Ordered that the final report and account of Paul E. Darrow, the former Trustee herein, filed herein on October 15, 1943, and supplements thereto filed herein on February 11, 1944, together with the objections filed thereto by the Securities and Exchange Commission, Stacy C. Mosser, as Successor-Trustee herein, and John W. Guild, as Successor-Trustee as aforesaid, and such other objections as may be filed thereto by parties in interest herein, be and the same are hereby referred to Archie Cohen as a Special Master, who is hereby directed to conduct full and complete hearings thereon and to report his findings of facts and conclusions of law with reference thereto to this Court.

Enter:

Holly

Judge.

155

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

* * (Caption—No. 58335) * *

ORDER

This matter coming on to be heard upon the final report and account and supplementary schedules of Paul E. Darrow, the former Trustee herein;

And it appearing to the Court that notice hereof has

been served upon all parties to this case and that all parties herein are present in Court or represented by counsel;

And it further appearing to this Court that objections to said final report and account as supplemented have been filed herein by the Securities and Exchange Commission and Stacy C. Mosser, the Successor-Trustee herein;

It Is Therefore Hereby Ordered that the final report and account as supplemented of Paul E. Darrow, the former Trustee herein, together with the objections filed thereto by the Securities and Exchange Commission and Stacy C. Mosser, Successor-Trustee herein, and such other objections as may be filed thereto by parties in interest herein, be and the same are hereby referred to Archie Cohen as a Special Master, who is hereby directed to conduct full and complete hearings thereon and to report his findings of facts and conclusions of law with reference thereto to this Court.

Enter:

Holly

Judge.

156 And on the same day, to wit, the 28th day of April, 1948 there were filed in the Clerk's office of said Court certain Transcripts of Proceedings had Before Honorable Archie H. Cohen, Special Master, Commencing on October 25, 1944, to and including May 28, 1947, (including the Abstract of Record), in words and figures following, to wit:

160

MEMORANDUM

January 23, 1946

To:

G. Gale Roberson, Principal Attorney, Reorganization

From:

John I. Mayer, Attorney

Subject:

Federal Facilities Realty Trust, S.E.C. Case No. 209-240
National Realty Trust, S.E.C. No. 209-241

Preliminary Statement

On October 15, 1943, Paul E. Darrow as trustee of Federal Facilities Realty Trust filed his final report and

account and thereafter on February 11, 1944, pursuant to court order filed Detailed Schedules supplementing his final report and account. On October 15, 1943, said Paul E. Darrow as trustee of National Realty Trust filed his final report and account and on April 21, 1944, pursuant to court order filed Detailed Schedules supplementing his final report and account. On May 15, 1944, the Securities and Exchange Commission filed objections to each of said final reports and accounts as supplemented by Detailed Schedules. Objections were also filed in each case by Stacy C. Mosser as successor reorganization trustee and in the case of Federal Facilities Realty Trust objections were filed by John W. Guild as successor trustee under indenture of mortgage dated October 1, 1929.

Judge Holly referred said final accounts and reports and the objections thereto to Archie H. Cohen as Special Master.

Attorneys Appearing in the Cause

The following counsel appeared at said hearing before the Special Master:

Irving Herriott and W. Ward Smith for Paul E. Darrow former reorganization trustee.

Deming, Jarrett and Mulfinger by C. Wesley Mulfinger for Stacy C. Mosser, successor reorganization trustee.

Jacob B. Courshon for John W. Guild, successor trustee under mortgage indenture.

161 Goldman; Allshouse and Healy by Louis Goldman for petitioning creditors.

Irwin T. Gilruth for F. B. Andrews.

G. Gale Roberson and John I. Mayer for Securities and Exchange Commission

The following is a resumé of the testimony taken at the hearings before the Special Master.

162 Hearing before Special Master Archie H. Cohen
October 25, 1944

CLAIRE M. MARQUISS

(Cross Examination by Mr. Mulfinger)

I reside at Arlington Heights, Illinois, and have been an accountant for over twenty years. I was employed by Jacob Kulp & Co.

Mr. Kulp's place of business was at 33 South LaSalle Street, and my employment with him started in December of 1928. His company dealt in investment securities. Myrtle Johnson was secretary.

After three years, the company moved to 29 South LaSalle Street on the eighth floor and occupied that office until the company's bankruptcy or until it turned over its business to George H. Andresen in 1933. The company dealt mostly in post office bonds, although in 1929 they started dealing in general securities. Colonial Securities was organized about 1930 or 1931. They shared offices with Jacob Kulp & Co. and its organizers were the officers of the latter, namely, Jacob Kulp, Myrtle Johnson and Lee Kulp. They occupied those offices until after Darrow's appointment when we moved to 100 West Monroe Street in 1936 or 1937.

I kept the books in the office and did the accounting work.

After Darrow's appointment, Jacob Kulp and Myrtle Johnson and I continued in his employ. Darrow occupied space in the office formerly occupied by Jacob Kulp & Co. and Colonial. Miss Johnson was office manager, and dealt with bondholders who came in. Kulp's duties were confined to the physical management of the buildings. Miss Johnson received \$250 a month. Kulp did not receive a salary for the first several months from Darrow; then his salary started at \$300 and remained at that figure. He spent about two or two and one-half hours a day in the office. After Darrow was appointed, I kept the books of the trusts and the subsidiaries and in between times recorded the few transactions of Colonial, which was then practically in liquidation and doing little business.

It was never in formal liquidation, but the business was gone and they were gradually liquidating what they could. What business they did was largely post office securities.

163 Myrtle Johnson and Jacob Kulp continued in Darrow's employ until he resigned. I have subsequently been employed by Stacy Mosser, successor trustee. I know Hattie Kulp, Mr. Kulp's wife. I know Jane Baumann and Marahlea Baumann, relatives of the Kulp's. Max Levy was a friend of Jacob Kulp and came into the office frequently until Darrow resigned. I met Sally Levy.

She is Mr. Levy's wife. Emma Johnson is Miss John-

son's mother and Gilbert Johnson is Miss Johnson's brother. Dearborn 8666 was taken over by Colonial upon the ending of Jacob Kulp & Co's activities. The number appears in the telephone book under the name of Colonial Securities Company and other names were listed as necessary. Miss Johnson had a private office next to Darrow's, and Jacob Kulp had a desk in the general office while we were located at 100 West Monroe Street. The insurance was written by L. A. Rose & Co. The bills were all marked "J. Kulp".

Jacob Kulp did not conduct an insurance business of his own through the office at that time. I don't know if he did at home.

CLAIRE M. MARQUISS

(Direct examination by Mr. Courshon)

From 1933 on Colonial did very little business.

It was chiefly in post office bonds of Federal, National of the subsidiaries.

CLAIRE M. MARQUISS

(Direct examination by Mr. Roberson)

The officers of Colonial were Jacob Kulp, Miss Johnson and Lee Kulp since its organization.

They have continually held the stock. Mr. Kulp is president, Miss Johnson, secretary and Lee Kulp, vice president.

Darrow moved to 100 West Monroe Street in about 1936 and remained there until August 1943. Until about a few months before Darrow's resignation, Colonial maintained a separate suite in which Kulp had an office, and it was not until that office of Colonial was relinquished that Kulp moved into Darrow's end of the office.

164 After Colonial gave up its space, Kulp had a desk in the private office of Darrow. The offices of Darrow and Colonial had separate entrances, but they were opened in between so that it appeared as one large suite of offices.

Colonial's lease ran out about two years ago, but it was allowed to use the office until a new tenant was secured—about 20 or 18 months ago. Colonial and the top trusts had separate leases.

Colonial occupied about 40% of the space and the trusts about 60%.

Darrow was listed in the book under the Colonial telephone number. Colonial paid part of the bill and the trusts paid a portion of it.

Each paid its portion of the bill by separate checks payable to the telephone company. Miss Johnson had an office adjoining Darrow's. She kept informed and was in a position to keep informed regarding the operations of the trusts and the several building corporations.

The trustees consulted her and also Kulp to a lesser extent as to operations of the trusts. He had access to the records and could receive any information but did not go into it to the same extent Miss Johnson did. He kept informed as to the operating costs and tenancy.

Kulp and Johnson were both in confidential relationship with Darrow, and he did not withhold from them anything with respect to the operation of the companies..

CLAIRE M. MARQUISS

(Redirect examination by Mr. Courshon)

Each of the subsidiaries was the holder of a building which issued first or second mortgage bonds..

These bonds were sold through Jacob Kulp & Co, or in case of some larger first mortgage bond issues by some underwriting house. Jacob Kulp & Co. took the bonds from the issuer at a discount and marketed them at what prices they saw fit. They paid the issuers by a credit on its 165 books.

A cash consideration generally had been partially paid by the Jacob Kulp & Company's advancing funds for the business or for the purpose of the issuing company or for financing the purchase of land. In some cases they might have started construction before the bonds were issued. After the issue of the bonds, Jacob Kulp & Co. paid for the completion of the project.

In regard to the bond issue of Federal in the sum of one million dollars dated October 1, 1929, Jacob Kulp & Co. marketed the bonds by picking up amounts from time to time as it was able to dispose them.

One million dollars in bonds was authorized and about \$550,000 issued.

The consideration consisted of book entries by way of credits and debits. Part of the bonds were used to pay Kulp for his equities in the subsidiaries. Jacob Kulp & Co. took the bonds from Federal at a discount.

CLAIRE M. MARQUISS

(Re-direct examination by Mr. Mulfinger)

The list under Colonial's telephone number included Darrow, Johnson and Federal while at 100 West Monroe Street. While Darrow was trustee, Miss Johnson was still secretary of Colonial and active in that capacity.

I had no other employment except the employment by Darrow. Colonial did not employ a stenographer in the last several years. One of Darrow's stenographers wrote the letters for Colonial.

CLAIRE M. MARQUISS

(Re-direct examination by Mr. Roberson)

My entire salary was paid by Darrow from 1935 until August 1943. I was paid nothing by Colonial.

Not to my knowledge were any of Darrow's other employees who rendered service to Colonial paid by Colonial. Frequently, people who held bonds of the subsidiaries called at the office to make inquiries about or to sell the bonds. They were generally referred to Miss Johnson 166 or Darrow.

Darrow purchased bonds of the subsidiaries with funds of the trusts, and Colonial was also engaged in buying and selling those bonds. Most of the people inquiring as to the price of the bonds would talk to Miss Johnson because they had had past relationship with her.

The trusts or one of the companies would buy all bonds they could possibly finance.

The office occupied by Miss Johnson was in that portion of the suite occupied by Darrow. The door at that end of the suite occupied by the trusts had their names on it and the number "1807". The door for the other part of the suite was marked "1811" and bore the name of Colonial.

CLAIRE M. MARQUISS

(Re-re-direct examination by Mr. Mulfinger)

The occupants of Colonial's office gradually left until about 1940 or 1941 when Kulp alone occupied the office for a couple hours a day. I was never specifically directed by Darrow to keep the number of bonds purchased or sold.

CLAIRE M. MARQUISS

(Cross-examination by Mr. Herriott)

I went to work for Jacob Kulp & Co. December of 1928. I believed we completed two of the buildings after that time. Jacob Kulp & Co. was still selling the bonds.

It is only because I had seen the bookkeeping entries that I knew that Kulp & Co. had underwritten some bonds and had credited the various companies with the proceeds. I was with Kulp & Co. when George Andresen was appointed voluntary trustee. As to the cause of Kulp's resignation as trustee of the two top trusts, I know it was a Department of Justice investigation of some kind. Andresen became trustee of the two top trusts and also of the Kulp-Andresen trust involving Kulp's securities.

I believe the latter securities subsequently went to Melvin Hawley, as trustee. I believe that as part of the settlement of the Department of Justice investigation Kulp turned over the securities to Andresen for the benefit of the various properties in the present proceeding.

167 I continued to work for Andresen.

He occupied the office formerly occupied by Kulp & Co. It went into receivership in 1933. Colonial had been organized by that time. Andresen and Colonial occupied the same space. I was working for Andresen but performed some work for Colonial. I presume the rent was divided between Andresen and Colonial.

Some time after Andresen became trustee, may be two months or six months, Miss Johnson was put on a salary basis.

At first, Andresen supervised the properties and later Kulp did so in about the same manner he operated under Darrow.

At 29 South LaSalle Street, one door was used as an entrance. Kulp and Johnson performed the same services

for Andresen as they later performed for Darrow. I think Miss Johnson started at \$200 a month. Andresen received \$1,000 a month for his services as trustee.

168 Hearing Before Special Master Archie H. Cohen
November 1, 1944

CLAIRE M. MARQUISS

(Cross-examination by Mr. Herriott)

Miss Johnson was employed full time by Andresen at \$200 per month.

Her salary with Darrow was \$200 a month. While she was working for Andresen, the bondholders came to see her the same as they did later under Darrow. I would not say that Colonial maintained a market for the securities of the subsidiaries but they assisted in maintaining a market. The trusts and the individual companies maintained the market.

The Andresen-Kulp trust was created in July 1933. Harry Holden was a co-trustee with Andresen, but I think that he had resigned prior to Darrow's appointment.

His salary was \$150 a month, in addition to Andresen's \$1000 a month. As I recall, Darrow opened his office at 100 West Monroe Street in about 1937. Colonial occupied about 40% of the office space.

After Colonial ceased to occupy its portion of the premises, the space was walled off. Colonial's name was not put on Darrow's door. As I remember, the only names on the door were those of Darrow and the two trusts.

The present trustee employs, with one exception, the same ones Darrow employed except Kulp and Johnson. For the past several years, Colonial has had no active operations and has been liquidating its securities as the market became advantageous. Colonial did a substantial business up until 1935 or 1936. The insurance on the buildings was placed by L. A. Rose & Co.

It is a regularly established insurance agency in Chicago. Mr. Kulp's name was typed on the bills just above the line separating the heading from the billing portion. The possibility is that this indicated a joint interest in the account. That was true while Darrow was trustee, as well as while Andresen was trustee.

169 As far as I know, the Kulp-Andresen trust was created for the benefit of Federal and National and the bondholders.

Melvin Hawley was appointed trustee for the Kulp-Andresen trust, but I do not know whether it was concurrent with Darrow's appointment in Federal and National. I took no part in the purchase, on behalf of Darrow, of bonds. This was handled by Miss Johnson or Darrow.

Darrow generally spent about seven hours a day in the office, except Saturday which was a half day. I know of two occasions on which Darrow purchased bonds issued by the companies or the trusts with his or borrowed funds.

Kulp and Johnson continued to spend time in the office after Mosser became trustee. The purchase of bonds continued during Mosser's regime while Johnson and Kulp were there. Johnson and Kulp have not been in Mosser's office since August 1, 1944. Mosser was appointed on August 13, 1943, and Kulp and Johnson continued in his organization and Miss Johnson continued to buy bonds for the trust estates.

CLAIRE M. MARQUISS

(Re-direct examination by Mr. Mulfinger)

After Mosser's appointment, Darrow, Kulp and Johnson were in the office for a time. I do not know whether an agreement was reached as to the amount they were to pay for their space.

All I know is I made an allocation on a basis suggested by Mosser but he and Darrow have never come to a settlement. Miss Johnson continued on the payroll two or three months after Mosser was appointed. Kulp was discontinued almost immediately. Colonial employed two people at the time Darrow was appointed.

Darrow's cashier worked on the books with Colonial as well as the trusts and Darrow paid her salary.

After 1936, Darrow's stenographer did the stenographic work for Colonial.

170 After Colonial gave up its office space, part of its furniture was moved into Darrow's office. The cage where the books were kept was in Darrow's portion. Miss Johnson occupied a private office in Darrow's space.

After Colonial relinquished its space, they moved their books, if they had any in their space, into Darrow's office.

I have telephone bills which run from September 21, 1940 to the present. Darrow paid all these bills. I have found no earlier ones, some of them were destroyed about two years ago by Darrow.

CLAIRE M. MARQUISS

(Re-cross examination by Mr. Herriott)

Colonial's stenographer, Miss Joerger, was paid by Colonial. I do not know whether she performed any service for Darrow. Darrow had his own stenographer. Miss Johnson and salesmen of Colonial dictated to Miss Joerger.

Colonial's messenger boy ran some errands for Darrow and did mimeograph work for Darrow as well as work in connection with mailings.

Colonial's lease expired early in 1940, but they occupied the space until some time later, which may have been about the end of 1942.

The telephone charges were allocated between Darrow and Colonial. They sent in their separate checks at the same time with the bill, which was rendered to Colonial.

However, there was a time when Colonial's telephone requirements were practically eliminated and from then on Colonial had no telephone charges except a few long distance calls. When its requirements were substantial, there was an allocation between Darrow and Colonial. To explain further—the telephone bill was paid by individual checks which were all sent in with the bill; for example, if it was \$85, \$40 might have been Colonial's and \$40 Darrow's and \$5 in other checks. There would be a memorandum to indicate who paid the various portions of the bill and it would be marked on the bills.

171 Darrow's cashier formerly worked for Andresen.

She performed services for Colonial also at that time.

CLAIRE M. MARQUISS

(Re-re-direct examination by Mr. Mulfinger)

Since September 1940, Colonial paid no part of the telephone bills except toll calls. Many other vouchers beside telephone bills were destroyed.

CLAIRE M. MARQUISS

(Re-re-cross examination by Mr. Herriott)

I didn't see the bills destroyed, but Mr. Darrow said he was destroying them because the files were becoming full and the old bills had no further value.

CLAIRE M. MARQUISS

(Cross-examination by Mr. Roberson)

I was in the office when Darrow was going through the files and removing bills. Darrow, so far as I know, did not state that there had been an account filed that would be supported by these bills.

I can't recall that I ever told him that from an accountant's viewpoint it might be well to keep the bills.

They were probably torn up and put in the wastebasket. I had never prepared any account for Darrow.

I realized that with no account on file the destruction of the bills would impede an audit.

I remember that I objected to his destroying bills for legal services but the others were simply the day to day bills.

It was my business to know where the bills were and that they were in safekeeping.

172 Darrow destroyed the bills before Andrews began his work.

Darrow told Andrews he had destroyed some of the bills.

We have some bills prior to September 1, 1940, but our records are incomplete.

There were some bills paid to Goldman's office by some of the subsidiaries.

We still have all the cancelled checks.

The allocation of telephone charges was made on the basis of the number of telephones used by the trusts and by Colonial. I think the basis of division remained constant from month to month, except for toll charges.

I never had any particular authority. Miss Johnson was the office manager and she generally determined the way things were to be done. Miss Johnson may have made this basis of allocation for phone bills, or I may have done so. Darrow probably had nothing at all to do with it because he depended on Miss Johnson for practically all of such details.

Kreitzer was employed by Colonial at \$70 a month and ran such errands for Darrow as making bank deposits and taking care of registered mail.

He was employed from about 1938 to 1941.

His work was occasional for Darrow. There were not many transactions in which Miss Johnson bought bonds for Mosser.

After Mosser was appointed, he bought some bonds but the market had tightened and very few were available. Mosser circularized bondholders in certain cases because the sinking fund provisions required that he do so to buy bonds.

173 Mr. Mosser's purchases were almost entirely related to the sinking fund operations. This was the same type of operations Darrow carried on.

Darrow bought some bonds with funds of the trusts outside of the sinking fund operations. Mosser may have done so on one or two occasions.

In general, Mosser's operations have all been purchases by the companies of their own bonds.

Federal was formed in 1929 and National in 1930 and Kulp was endeavoring to persuade holders of the underlying bonds to exchange them for certificates of beneficial interest in the top trusts.

As far as I know, the Kulp-Andresen trust was formed for the benefit of all the holders of certificates of beneficial interest.

Colonial bought some securities in the last three years. Colonial gave up its State license several years ago and hasn't done any business since that time. They have merely sold their own securities in liquidation.

Besides securities of the top trusts and subsidiaries, I remember that Colonial dealt in railroad bonds.

I recall only North Western 4-3/4 bonds, but the trading was not great. Frequently, brokers in Chicago called Colonial to make inquiries about the securities of the subsidiaries.

The "Chairman Account" represents the assets on hand at the time Darrow took over in a general operating account. When Andresen started operations, he succeeded to the same type of operations that Kulp had carried on and served as fiscal agent for the underlying companies. He took the money collected for rents paid the bill and had a current account on the books of the companies. That was true until he set up individual bank accounts for each company. The balance on hand at that time became the "Chairman Account". No company ever had any money.

It was all in Jacob Kulp & Company's account.

174 When Andresen took over, the Kulp and Company's balances were stopped at that point, but he continued

the same type of operations until September 1, 1934; when he established individual accounts.

The residual debit and credit relationship of the subsidiaries to the "Chairman Account" was simply passed on by Andresen to Darrow in 1935.

The income from the several buildings was all put into one account and the expenses were paid out of this large account.

CLAIRE M. MARQUISS

(Cross Examination by Mr. Goldman.)

I testified that Goldman's firm had submitted legal bills. I don't know of any, however, that had not been approved by the Court, except a few services to Park View in the matter of collecting rent.

It was the individual companies that were involved in the Goldman bills.

CLAIRE M. MARQUISS

(Recross Examination by Mr. Herriott.)

The bills were destroyed before the Andrew's investigation, so it was probably in the summer of 1941.

I believe I was able to find all bills I looked for of any particular consequence.

I believe Darrow said he was destroying general operating expense bills of the subsidiaries and may be of the trusts. Office expense bills were about the only ones they had.

The books kept by Darrow did show all the expenditures for the type of bills which he destroyed.

I have no knowledge of any checks being destroyed.

175 Q. (Would you consider the allocation of the telephone bills a fair and proper one?)

A. (I would.) The bills generally ran from 40 to 50 dollars. While Colonial was paying a portion of them, they averaged about \$60.

While Colonial was active, brokers contacted it regarding the purchase and sale of bonds.

As a result of those contracts, bonds were sold to Darrow and this represents a substantial portion of the bonds he bought. Brokers who wanted to sell bonds would contact Colonial, find out the price and then the bonds would

be sold to Darrow. Apparently, Colonial, was the source of market information or clearing house for the bonds of the subsidiaries.

The amounts that Jacob Kulp & Co. owed the various subsidiaries were valuable for income tax deductions and were charged off eventually.

There was no "Chairman Account" when Andresen took over because the old account was Kulp's account. The old Kulp account was still on the ledger when Darrow took over, although it had gone through bankruptcy.

The trusts owed the "Chairman Account" money at the time Darrow was appointed trustee. When Darrow took over the securities and bank account and the "Chairman Account" were transferred to him.

There have been two distributions of dividends out of the "Chairman Account" to the subsidiaries which had an interest in it.

LOUIS GOLDMAN

(Direct Examination by Mr. Mulfinger.)

I am a lawyer. My firm represents Park View Manor, and we are doing some work for Station F and we have done some work for Los Angeles.

I do not believe we ever represented Federal or National. We never represented Darrow except in one suit, now pending, wherein he is one of the trustees of Station F.

176 I never sent Max Levy a bill for legal services. In connection with the sale of securities in the State Court, May Levy may have sent our office a check which was used as part of the purchase payment for certain securities. I rendered him no bill for that. That was in the case of Seligman & Jacob Kulp, et al., 35 S 11241; Superior Court of Cook County.

The estate in that case comprised a large amount of securities of the subsidiaries of the two top trusts. Prior to the sale, I had several conferences with Burke Williamson, attorney for Darrow.

We were interested in the reorganization of both top trusts and feared that the securities might come into unfriendly hands and that no proper plan could be effected. Burke Williamson was concerned for the same reason because if unfriendly parties controlled the top trusts Dar-

row would probably have no further interest. Thus, we wanted to procure a friendly purchaser.

Williamson stated that Darrow was in no position legally to make any bid for these securities. All three of us discussed the matter with Miss Johnson. After several talks we had with Miss Johnson and maybe Darrow (I am not sure whether he was present), it was suggested that she might be able to induce Joe Baumann who had an interest, (to bid at the sale).

Finally, Miss Johnson called me up and said that if I could arrange for the purchase of the securities at not to exceed \$25,000; she would furnish the purchaser and the funds. I suggested that we engage Michael Tauber & Company to make the purchase for a brokerage commission. I was satisfied the purchaser would be friendly. It was following that arrangement that a sale was held. In addition to the purchaser, those present included Burke Williamson, myself, Mr. Biessat and Richard Levy of Michael Tauber & Co. All of the securities were purchased by Michael Tauber & Co. within the \$25,000 limit. Thereafter, I received several checks and turned them over to Mr. Levy. We met at the Continental Bank and Mr. Levy gave us the securities. At that time, there were present, the Master, Mr. Biessat, I believe Richard Levy, Miss Johnson and myself.

177 I caused all of the securities to be released to Miss Johnson, except the securities of the two top trusts, which I deposited in the vault of the Continental Bank. I don't remember if I represented anybody: I received no fee. I merely had the desire to see that the securities of the top trusts did not reach adverse parties; and when plans were effected, they provided for subordination of all those top trust securities that are now in my safety box. I am not the owner of those securities, but at the proper time they are to be used for the benefit of my clients, the petitioning creditors.

Darrow's attorney knew exactly what was being done and the purpose thereof.

The money was advanced to me by Miss Johnson, or it may be that part of it was advanced by Max Levy.

I don't know if Darrow contributed toward the fund used to buy the securities. His attorney said he could not legally buy them.

The sale took place in May of 1938. I would not turn those securities over to anyone until the right to possession is established in some legal proceeding or some manner satisfactorily showing proper title.

Miss Johnson told me that Joe Baumann had advanced some of the money so that he had acquired the ownership of the securities I am holding. We have a record of the checks I received to purchase the securities on our books.

Nobody has been in the box at the Continental and nobody is going into the box.

The securities were sold in two blocks because Bióssat said he was interested only in the securities of the two trusts.

The one block contained the bonds of the subsidiaries and the other had the securities of the two top trusts.

178 Hearing before Special Master Archie H. Cohen
November 3, 1944.

LOUIS GOLDMAN

(Examination continued by Mr. Mulfinger.)

My records show the receipt and disbursement of \$24,203.55.

There were perhaps 5, 6 or 7 bids at the sale.

The sale was held 5, 6 or 7 days prior to the order confirming the sale.

My ledger shows under "exchange of checks" \$7,700 paid on May 6, 1938 to Michael Tauber & Co. and \$16,503.55 paid on May 19, 1938 to Michael Tauber & Co.

I received the checks, as I remember, from Miss Johnson but I don't recall whose checks they were.

Q. (Did you represent Max Levy in this transaction?)

A. I don't know.

Michael Tauber & Co. turned over the securities to me on the same day they were turned over to them at the Continental Bank. I have a receipt here dated May 19, 1938 from Master Bolton to Michael Tauber & Co. showing the payment of \$23,051.00 as the full purchase price for the securities.

I delivered my check for about \$16,000 to Michael Tauber & Co. at the time of the transfer in the Continental Bank.

I am not mistaken, I agreed to send them a check on

account when the order of sale was confirmed.

179 No one else has access to that box, so far as I know.

It did not make any difference to me or the parties who had authorized me to purchase the securities for \$25,000 whether they were purchased in one lot or two. We were interested in obtaining all the securities for a certain total sum.

I don't know who the legal or equitable owners are of the securities in that box, but I have an opinion in that matter.

The block of bonds in Lot 1 was turned over to Miss Johnson not by me but by Michael Tauber & Co. directly.

I knew she was an employee of the trustee.

LOUIS GOLDMAN

(Direct Examination by Mr. Roberson).

It was Miss Johnson who secured the funds with which to make the purchase of these securities.

You (Roberson) previously pointed out to me that some funds had been advanced by Max Levy. I had been under the impression that part of the money had come from Baumann. You further discussed with me statements in the Andrew's report that according to the books of Colonial a payment of \$13,853.55 to Goldman, Allshouse and Healy was charged to the Max Levy special account; and that certain of the bonds in Lot 1 were subsequently sold to Darrow for \$12,447.55, although the entire Lot 1 at the judicial sale brought \$8,050.

Andrews further states that Darrow made payment by check of \$12,447.55 on May 16, 1938.

Biossat bid \$15,000 because he had a fee of \$13,500 coming and the Master was entitled to \$1,500.

180 Block 1 consists of \$199,000 in bonds of subsidiaries and sold for \$8,050. Block 2 had shares of beneficial interest of Federal in the amount of \$623,580 and shares of National in the amount of \$269,040 and \$286,100 6½% Series "A" bonds of Federal. Block 2 was sold to Michael Tauber & Co. for \$15,001.

The sale occurred on May 6, 7 or 8, 1938 and was confirmed on May 16, 1938. The securities were delivered to Michael Tauber & Co on May 19, 1938.

Master Bolton gave a receipt to Michael Tauber & Co. for \$23,051, which was the full purchase price of all the securities.

Master Bolton first delivered the securities to Mr. Levy of Michael Tauber & Co. and took his check and then Levy, at my direction, turned over the securities in Block 1 to Miss Johnson and turned over to me the securities in Block 2, which I put in the vault.

Apart from a conversation with you (Roberson) no one at any time has suggested that I deliver the securities over to anyone. We proposed to have the securities voted for a plan that the committee representing the bondholders and beneficial certificate holders thought was fair and feasible.

That pretty nearly gave us control of both these cases, and in one case it does actually give us control.

It was not my idea at all times to subordinate the securities. That was a subsequent development. I have no control in the subordination matter, but I thought I had control in voting. I do not know who would vote the securities.

If a time had been fixed for filing claims, I might have filed a claim as holder of the securities on behalf of the owner. As a practical proposition, I do not think it would be necessary even to cast a vote for a plan with the securities. If they were not voted against the plan, we would still have more than sufficient to put over any plan.

181 Miss Johnson never made any demand that I turn over the securities to her, nor did Darrow, nor anyone else, except possibly your (Roberson's) office. There was a payment to my firm on May 19, 1938 of \$13,853.55.

My check to Michael Tauber & Co. was for \$16,503.55. The difference of \$2,650 was represented by a check either of Miss Johnson or Max Levy. Miss Johnson never told me the source of the funds.

The commission to Michael Tauber & Co. was 5% of the purchase price of \$23,051 or \$1,152.55. My records don't show from whom the check of \$2,650 was received, but this morning Miss Johnson told me it came from Max Levy. My records merely show an exchange of checks aggregating \$16,503.55.

I have never bought securities in the top trusts, but I have traded in the securities of the subsidiaries after they were reorganized.

LOUIS GOLDMAN

(Direct examination by Mr. Courshon)

It is my opinion that those securities in the box belong to the Baumann interests in New York.

I tried to enjoin proceedings in the Seligman case but Judge Holly held against me.

We thought the Federal Court could make a determination and construe the trust in the Seligman suit and determine what should be done with the securities.

I believe my first dealing with Colonial occurred in 1938 or 1939.

I assumed that the officers and directors of Colonial were Miss Johnson and Mr. Kulp; and I knew that Miss Johnson was employed by Darrow, as trustee. I dealt with her as agent of Colonial.

182 I may have known that the \$13,853.55 came from Colonial. The same is true of the \$7,700 check.

I did not have any conversation with Darrow regarding the securities prior to the sale, but I did talk with his attorney, Mr. Williamson.

I am not acquainted with the statement in the Andrew's report on Page 5 that all but \$32,100 of the \$199,000 bonds bought by Michael Tauber & Co. for \$8,050 found their way to Levy, who realized \$22,912 therefrom. We participated in the reorganization of some of the subsidiaries of Federal. Ferry Station was one.

In each case we represented bondholders' committees or petitioning creditors. We may have been in the Roseland case. I do not believe we were in the U. S. Building case. I think those are the only ones of the subsidiaries of Federal in which we had an interest but we had many in National.

In this case, I believe the petitioning creditors whom I represented have claims based on Federal bonds.

LOUIS GOLDMAN

(Redirect examination by Mr. Mulfinger)

In my opinion, the securities were not worth the amount paid for them at the judicial sale.

Mr. Biossat's bid of \$15,000 for the securities of the top trusts was far more than the market value of them.

This morning when I talked to Myrtle Johnson I asked her whose checks made up the \$16,503.55, which cleared through my office on May 19, 1938. She told me that one of them for \$13,000 was Colonial's check and the other was Max Levy's. She did not tell me that on May 18, 1938, Darrow had deposited \$12,447.55 in the Max Levy special account.

183 LOUIS GOLDMAN

(Recross examination by Mr. Herriott)

The \$25,000 total price I was authorized to pay for the securities was to include the price and the commission to Michael Tauber & Co. We never allocated the amount to be bid for Group 1 or Group 2.

The parties advancing the money were willing to pay \$25,000 for "the whole ball of wax".

I found Miss Johnson very familiar with every detail of every subsidiary.

184 Hearing Before Special Master Archie H. Cohen
November 20, 1944

MYRTLE JOHNSON

(Direct examination by Mr. Mulfinger)

I live at 7012 South Shore Drive. I have been associated with Darrow in the operation of five properties, of some of which I am an officer and director. I am secretary of Colonial. I was previously associated with Jacob Kulp in the erection of thirty properties throughout the United States together with the distribution of the securities of said properties. Most of these were post office sites. All of the securities were sold through our office.

Some were distributed through other houses than Jacob Kulp & Co. I first became associated with Kulp thirty-four years ago. The office was then at 35th Street and Iron Street. He opened the downtown office in 1921 at 105 West Monroe Street, which was shortly after he started the building projects. I continued my association with Mr. Kulp until 1935.

The first building was 22nd Street Station. I participated actually in that transaction and the subsequent ones. I was secretary and director of Jacob Kulp & Co. I sold the securities, handled payment of architect's certificates

and generally supervised all the work in the organization. Colonial was organized in 1931.

It is an Illinois corporation. The stockholders were Jacob and Lee Kulp and myself and we still own all of the stock except for some additional stock issued to Mrs. Kulp.

1,400 shares were issued to Jacob Kulp, 300 to Lee Kulp and 300 to me. 2,000 additional shares have been issued to Mrs. Hattie Kulp. The corporation has not legally been dissolved. When Darrow was appointed trustee of National and Federal, I was in the employ of Colonial and I was working for Mr. Andresen. Between 1930 and 1935, there was considerable dealing in the bonds of the subsidiaries.

185 I handled some of the sales, but we also had a sales organization. Prior to Mosser's appointment, we had numerous inquiries from bond houses concerning the market value of these securities.

Jacob Kulp & Co. was synonymous with post office building bonds and the brokers would come to us with their inquiries. I would quote what I believed to be the then market price. After Darrow's appointment, I did a great deal of work in the reorganization of the subsidiaries in connection with the leasing of the properties.

I handled any inquiries that came in as well as complaints.

I had general supervision of the office and acted as Darrow's assistant in the various matters that came up.

While Darrow was trustee, in my duties in the office I was participating in the buying and selling of bonds of the subsidiaries.

I do not think I kept Darrow informed as to all my activities. I negotiated purchases and sales of some bonds and securities without telling Darrow. As far as I remember, there were no other matters that I took care of without disclosing the nature of the transaction to Darrow. Darrow was at the office daily. He never gave me the authority to buy and sell bonds, but, it was implied.

Where purchases or sales affected him, I reported to him all such transactions and he would not remonstrate with me because I had acted on my own initiative. That is what I mean by implied authority.

Mr. Kulp was there during all the period Darrow was

trustee. My salary was \$250 a month from Darrow. It was raised to \$275 a month about a year and a half ago.

In 1935 and up to October 15, 1936, Kulp received no salary; thereafter, he received \$300 a month from Federal to and including October 1943. He received no other salary. He did obtain an apartment in Park View Manor as a result of the reorganization in 1935. From 1935 to the resignation of Darrow, Darrow was managing that building.

186 Kulp occupied an apartment from the time the building was completed. That was for part of the services he rendered to Darrow. The rental value of the apartment was about \$140 a month. Kulp's salary and my salary were paid entirely by Federal. Later on the office expenses, including the salaries, were apportioned between the two trusts.

During my employment by Darrow, I personally bought bonds of the subsidiaries. I do not keep personal books of account, but I have memoranda.

I have an account with Colonial listed under my name. I also used the account known as the Max Levy special account in connection with some securities that were purchased.

That was my account in so far as I handled all the funds in connection with it. Darrow used the telephone number Dearborn 8666, for which Colonial held the contract.

When we moved from Mosser's office, we took that telephone with us. I know about the Seligman v. Jacob Kulp case.

I first learned about it in 1934 or 1935 when Kulp was served with a summons.

ALEX BRIGHT.

(Direct Examination by Mr. Mulfinger.)

I am a deputy clerk of the Superior Court of Cook County. Pursuant to a subpoena, I produced the files in the case of Seligman v. Kulp—35-S-11241.

(A copy of the public notice of sale was marked Mosser's Exhibit No. 2 for identification and was received in evidence.)

187 MYRTLE JOHNSON

(Examination by Mr. Munsinger)

Darrow didn't testify in the Seligman case, so far as I recall. I was at the sale and Michael Tauber & Co. was the successful bidder. I had a discussion about the sale with Goldman prior to its taking place.

I also discussed it with Kulp and Harrington, our attorney. I also discussed the matter of raising some funds with Levy. I borrowed \$10,000 from Levy. Michael Tauber & Co. was acting for a group of people. Goldman simply handled the money.

I gave him all the money—\$24,203.55. I borrowed from Levy \$10,000, which was later repaid. Goldman received a check of \$7,700 from Levy under date of May 9, 1938 and a check of \$2,300 on May 16, 1938, also from Levy. I also received a check from Colonial for \$14,203.55 being their check No. 9271, dated May 19, 1938, payable to Goldman, Allshouse & Healy drawn on the Continental Bank.

Of the \$14,203.55, the sum of \$13,853.55 passed through the Max Levy special account and was sent to Goldman's firm.

That was part of the check of \$14,203.55. The difference was charged to George Peterson's account. I borrowed the \$250 from him, but he was subsequently repaid. He is my uncle. The total amount of funds I furnished to Goldman was \$24,203.55. \$12,447.55 was received from Darrow in the form of a number of checks. Within the last few years, some time after the sale, Darrow prepared for me a make-up of this item of \$12,447.55.

This was part of the \$14,203.55. I instructed Goldman as to the use of the money. On May 19, 1938, I met Goldman at the Continental Bank vaults. The sale was confirmed on the 16th of May, I believe.

The sale took place on May 6th. Slightly in excess of \$8,000 was bid for Lot 1. Certain of the securities were delivered to me at that time. They were the securities of the underlying subsidiaries.

188 I delivered to Darrow part of the securities covered by a memorandum I have with me and placed the balance in the safety box of Colonial. Those were the securities that were purchased with the \$12,000 he gave me.

I don't think there was any discussion with Darrow about the sale after it took place. There were discussions with Darrow at various times prior to the sale concerning that block of securities. Darrow had a complete record of the securities. At the time he gave me the \$12,447.55, the sale had been confirmed and we made arrangements for him to receive these securities.

The sale had been confirmed but the money had not been paid.

I did not inform Goldman who the contributors of those funds were.

The aggregate face amount of the securities in Lot 1 totaled \$199,000.

MYRTLE JOHNSON

(Direct examination of Mr. Roberson)

My sister, Gertrude Johnson, my mother, Emma Johnson, my brother, Gilbert Johnson, my sister, Valerie Aldridge, my uncle, George Peterson and my sister-in-law, Frances Hackett Johnson, wife of Gilbert, traded in securities of the top trusts and the subsidiaries while Darrow was trustee. However, Frances bought her bonds before she married my brother, but she was then a close friend of mine.

I had not arranged with Darrow prior to the sale in the Seligman case to take over any of the securities or the prices therefor.

These arrangements were not made until after the sale had been held. Originally, I did not expect Darrow to participate at all. I had arranged with Baumann to borrow the \$15,000 from him and that together with \$10,000 from Mr. Levy was the top figure we were going to bid. After the sale had been held, I talked the matter over with Darrow and he decided he ought to participate. I do not believe I stated what each lot sold for.

189 I do not know that I told him how I was raising the \$24,203.55. Darrow selected from the list of securities in Lot 1 the ones he wanted. He determined the prices he was to pay and in most instances that represented about the prices at which securities were selling.

He knew these securities were paid of the Seligman group and that they had been purchased by Michael Tauber & Co. at that sale.

I am not certain that he knew the connection of Mr. Goldman with it. I didn't tell him what had been paid for these securities and he did not inquire. Jacob Kulp and I discussed these securities a number of times.

I believe I told Darrow I was issuing a check for the balance of the cost after deducting the money that had already been sent to Goldman's office. Darrow advanced the checks totalling \$12,447.55 on May 16, 1938, and the amount was entered on Colonial's books on May 18, 1938.

There were fifteen checks because there were fifteen different items but they came from eight sources, as follows:

\$24,500 in Station D bonds to Federal for \$735.

\$25,200 in Ferry Station bonds (2nd) to Federal for \$126.

\$2,000 in Irving Park bonds (2nd) to Federal for \$300.

\$300 in Roseland bonds to Federal for \$9.00.

\$5,000 in United States Building bonds (2nd) to U. S. for \$500.

\$6,000 in 22nd Street Station bonds to Federal for \$1,800.

\$1,000 in 22nd Street Station bonds to 22nd Street for \$300.

\$3,000 in Villa Building bonds to Federal for \$95.55.

\$3,800 in Ogden Park bonds to Ogden Park for \$1,140.

\$8,500 in 6929 North Clark Street bonds by 6929 North Clark for \$2,975.

190 \$2,000 in Windsor Park bonds to National for \$400.

\$9,400 in Windsor Park bonds to Chairman Account for \$1,580.

\$5,000 in Windsor Park bonds by Windsor Park for \$1,000.

\$32,900 in Park View Class "B" preferred 2nd mortgage bonds to National for \$1,157.

\$100.00 in North Halsted bonds to North Halsted for \$30.00.

The total of the purchase price was \$12,447.55 and checks from Darrow were dated May 16, 1938, except North Halsted which was dated May 18, 1938.

I paid Goldman \$14,203.55.

(Receipt dated May 19, 1938 by Michael Tauber & Co. for \$24,203.55 to Goldman marked S.E.C. Exhibit 1, for identification.)

Goldman and Richard Levy were present when I received the receipt at the Continental Bank.

Goldman took the securities in Lot 2 and I took the securities in Lot 1.

Darrow may have made the checks out on the 16th after the sale had been approved but they were not delivered until the 18th because that is the date they were deposited.

I could not have given the proceeds of the Darrow's checks to Goldman prior to the 19th because Colonial's check is dated the 19th. Darrow and I agreed on the prices on or before the 16th because that is the date of the checks. At any rate, it would be some time between the sale on May 6th and May 16th. I had told Darrow that Tauber's office had purchased the block of securities on my behalf.

I don't think Darrow knew the securities were handled on Colonial's books in the name of Max Levy.

191 I just used the name of Max Levy to designate it as an account because that was one of the sources from which I received the funds. Max Levy never had any interest in these securities nor a lien for the repayment of his \$10,000. He had no note for the \$10,000. He made his two checks to Goldman's firm. I repaid the \$10,000 through the Max Levy account through Colonial within approximately a year.

I believe Levy made a bank loan for \$11,000 on his own collateral and issued his checks to Goldman's firm for \$7,700 and \$2,300. For this loan, Levy received interest at the bank rate and \$6,000 of Station F second mortgage bonds, which he still holds.

This money was loaned to Kulp and me individually. According to my record it was repaid between June 22, 1938 and July 8, 1939. The \$6,000 in Station F second mortgage bonds had been part of Lot 1.

Mr. Goldman was agent for Kulp and me in handling this transaction.

Hattie J. Kulp holds a power of attorney on the safety box in which Goldman placed the securities in Lot 2.

She would have access to the box. I received one of the keys to the box the day we were over at the Continental vaults.

I turned it over to Mr. Kulp.

Darrow and I may have discussed the securities in Lot 2 many times.

I left the securities in Goldman's vault because he was working on the reorganization of the trusts and like our

selves was interested in not letting the securities reach unfriendly hands. The reason for having the securities in Mrs. Kulp's control, was that she would have some assurance that they would be available to protect the loans made to Jacob Kulp by Baumann and his step-daughter who were relatives of Mrs. Kulp. The bonds are bearer instruments but the certificates of beneficial interest are in Kulp's name and endorsed in blank.

192 A few of the securities may be in my name or Lee Kulp's name. I doubt if Goldman has any interest in them. Those having interest are the Baumanns, Kulp and myself. Mrs. Kulp has a power of attorney to enter the box; and if she wanted to deliver the securities to the Baumanns she could do so.

This would be as additional collateral. Baumann did not advance any money to purchase the securities. However, he later acquired some in the name of his daughter, Jane Baumann and paid Colonial Securities for them. The payments which Colonial made to Max Levy on the \$10,000 loan were derived from the sale of the securities in Lot 1.

The total of \$24,203.55, which was the cost of the bonds, came from the sale of part of the securities comprising Lot 1.

As to the removal of receipts from the files, I have the records pertaining to Park View, Crandon, Windsor, Rogers Park and I think Los Angeles back to 1936 or 1937.

I think the others are up on top of the vault. I think what Darrow destroyed were old receipts, especially of Jacob Kulp & Co. This occurred about the summer of 1940.

I believe his cut-off date was around 1937. However, we have all the cancelled checks. I do not know why Darrow selected 1937 as a cut-off date instead of 1935, the year of his appointment. I told him we ought to keep the bills for a few years prior to that time.

MYRTLE JOHNSON

(Cross Examination by Mr. Herriott.)

We ceased paying rent on the Colonial portion of the office in April 1941 but the wall was put up in January 1943.

I have some telephone bills prior to September 1941.
193 Hearing before Special Master Archie H. Cohen
January 3, 1945.

EDWARD A. KOHN

(Direct examination by Mr. Mulfinger)

I am in the casualty department of L. A. Rose & Company, agents for insurance companies. I do the underwriting and placing of casualty insurance business.

I am not familiar with Jacob Kulp broker account so far as the bookkeeping is concerned. Our chief bookkeeper is Joanna Stark.

EDWARD A. KOHN

(Direct Examination by Mr. Roberson.)

We keep our records for a period of four years. For anything prior to that time, we would have to refer to the companies.

MYRTLE JOHNSON

(Further Examination by Mr. Roberson.)

(Schedule showing selling prices of securities in Lot 1 not delivered to Darrow was marked S.E.C. Exhibit No. 2 for id.)

I prepared S.E.C. Exhibit No. 2 for id. It shows the selling prices of the securities in Lot 1 which were not delivered to Darrow. The total par value is \$70,300 and the proceeds from the sale of these amounted to \$19,457.50.

The securities in Lot 1 not shown in this exhibit were sold to Darrow. He paid \$12,447.55 for \$127,700 in par value of securities.

It may be that the total par value of Lot 1 was \$198,000.

194 Lot 2 was composed of \$286,100 Federal 6½% collateral trust bonds, 62,358 shares of beneficial interest and 10,761 3/5ths shares of National. Lot 2 at the judicial sale brought \$15,001.

I recall the two lawsuits against Jacob Kulp, Lee Kulp and myself in one of which Quiney Station was the plaintiff and in the other of which Marie H. Boord was the plaintiff.

I believe Joseph T. Harrington represented the defendants. I think I was a member of the Board of Directors of Quincy in 1930. I do not believe I was a member of the first Board, I believe Quincy was organized in 1925 or 1926.

If I was not a member of the first Board, I became a member of the Board shortly after organization. I was on the Board until July 1933. Jacob Kulp was on the Board with me all of the time and Lee Kulp part of the time. Federal owned all the stock of Quincy.

I handled the details of Quincy under Kulp, Andersen and Darrow. I handled the records in connection with operations, rentals, disbursements, retirement of bonds, etc.

Quincy was formed about January 1926. I believe among its assets was an account receivable against Jacob Kulp for \$100,000.

That was an item which was charged to the credit balance of Quincy on the books of Jacob Kulp & Co. We had set up a number of items charged to him for various expenses in connection with the post office properties. It remained on the books of Jacob Kulp & Co. as a credit and the \$100,000 was charged against that balance. This item was placed on the books about 1930. The consideration for the \$100,000 arose as follows: Kulp owned a one-quarter interest in the property and he turned over that one-quarter interest, together with the three-quarters interest of other people which he acquired, to Quincy and he received only the stock of Quincy, whereas he paid \$100,000 to Bertram W. Frank for one-fourth interest and \$106,500 to Harry M. Smith for one-fourth interest and \$152,000 to the Investors' Company for their one-quarter interest. These parties owned the real estate with the improvements. They sold the three-quarter interest to Kulp and the building was erected under his supervision and financed by him through the Madison-Kedzie Bank.

195 Kulp paid for the three-fourths interest in cash.

Kulp then conveyed the entire real estate to Quincy. On December 10, 1925, he made a written offer to Quincy.

He stated that he owned a one-quarter interest in the property under lease to the government at \$125,000 annually which had been reduced to \$123,500 and stated that

he was negotiating for the other three-quarters interest and would convey all of his interest to Quincy subject to a mortgage of \$590,000 in consideration of 800 shares of Quincy stock and that Quincy delivered to him \$1,100,000 first mortgage bonds and \$100,000 second mortgage bonds; and he agreed to sell the first mortgage bonds at 92½ and the second mortgage bonds at the highest possible price. Out of the proceeds of such sales, he agreed to acquire the remaining three-quarter interest to pay all expenses of the bond issues and to turn over any balance of proceeds of bonds to Quincy.

The opening journal entries of Quincy show as assets, among other things, land \$606,500; building \$294,700; furniture and fixtures \$70,400 and totalling \$1,070,708.35. The principal liabilities were first mortgage bonds, \$590,000. Surplus, \$100,000; accounts payable for the property to Bertram W. Frank, \$100,000; Harry M. Smith, \$100,000; Investors' Company, \$152,000; capital stock, \$5,000.

Part of my answer was taken from the 1925 balance sheet of Quincy.

Mr. Kulp had previously subscribed for 200 shares of Quincy stock and that with the 800 shares additional would make 1,000 shares. I would think that was the total issue, except for one or two qualifying shares in my name and some other person's name.

Harry M. Smith and Mr. Frank are members of the Board of Trade; and the Investors' Company was operated in connection with the Madison-Kedzie Bank, of which bank Mr. Kulp had been vice-president.

The building was completed May 16, 1941.

196 Kulp in conjunction with Smith, Frank and the Investors' Company purchased the land and financed the construction of the building.

About December 5, 1925, Kulp paid the Investors' Company \$10,000 for an option on their interest in the property and the balance of \$142,000 was paid to the Chicago Title & Trust Company on January 11, 1926.

For the price paid here, Frank, Smith and the Investors' Company turned over to Kulp their interest in Station "D" as well as Quincy, the parties owned the same fractional interest in the two properties.

The \$100,000 account receivable from Kulp arose in 1930.

There had been various advances charged to Kulp on the books of Jacob Kulp & Co., aggregating \$206,179.23.

Of this sum \$100,000 of it was loaned or advanced to him out of funds of Quincy.

Quincy had more than \$100,000 on deposit with Jacob Kulp & Co., and its balance was charged against Quincy. I do not believe the \$100,000 account receivable was owing from Kulp personally.

MYRTLE JOHNSON

(Direct Examination by Mr. Courshon).

The old bonds of Quincy were called and new bonds issued, and Mr. Kulp never received any consideration.

MYRTLE JOHNSON

(Redirect Examination by Mr. Mulfinger).

Reverting to the Seligman case, there were two checks by Levy totalling \$10,000 and I gave Goldman in addition Colonial's check for \$14,203.55.

197 MYRTLE JOHNSON

(Redirect Examination by Mr. Roberson).

(The original S.E.C. Exhibit 1 was withdrawn and a copy was marked S.E.C. Exhibit 1 for identification. The copy of S.E.C. Exhibit 1 is a true and correct one.)

The original was signed by Richard Levy of Michael Tauber & Company. The body of the original is in the handwriting of Goldman.

It is signed by Richard Levy. (Leave was given to withdraw the original and the copy was received in evidence as S.E.C. Exhibit 1.)

(S.E.C. Exhibit 2 for identification was received in evidence.)

198 Hearing before Special Master Archie H. Cohen
January 12, 1945

CHARLES H. TILLMAN

(Direct examination by Mr. Mulfinger)

I live at Ingleside, Illinois. I am an insurance agent and a member of the firm of L. A. Rose & Co.

It is a partnership made up of L. A. Rose and myself at 175 West Jackson. We operate a general insurance agency. We have had dealings with Jacob Kulp.

In our dealings, he acted as the broker. We did a general insurance business with Jacob Kulp.

When insurance is sold, we make out a bill and the original copy goes with the policy while the duplicate acts as our ledger.

We keep copies of bills in our ledger for about three years. We keep policy records three years after expiration of the policy.

(Copy of a statement prepared in the witness's office was marked Trustee's Exhibit 4 for identification.)

(A bill prepared in his office was marked Trustee's Exhibit 5 for identification.)

(A credit memorandum for suspension endorsement was marked Trustee's Exhibit 6 for identification.)

Kulp appears to be the broker in the particular transaction for which said bill was sent. A pencil notation on Exhibit 5 for identification appears to represent the commission.

The pencil notation reads "\$193.99". Trustee's Exhibit 6 for identification is a credit memorandum for suspension endorsement in connection with boiler insurance. We used that type of memorandum to give credit to customers, through brokers, where insurance was cancelled or amended. Trustee's Exhibit 4 for identification appears to be a commission statement. Apparently, we received some checks directly and paid Kulp the commission.

The statement to the assured did not contain a reference to the commission. From the bills I can readily tell you the commissions paid. All of those bills have a code on them.

On Trustee's Exhibit 5 for identification, you use the number 3 in quotes, which means 15% commission. Each particular digit is equivalent to 5% and each one-half is equivalent to 2½%.

CHARLES H. TILLMANN

(Direct examination by Mr. Courshon)

Commissions were paid either by check or by allowing credit on some open account items. The premium from the subsidiaries came to us from Kulp, as a broker.

We may have received some checks from Darrow, as trustee.

We check each broker every year to see whether he has his license. We found no years where Kulp had no license except the present year.

CHARLES H. TILLMANN

(Cross examination by Mr. Herriott)

On all the insurance he wrote through our company, Kulp was paid a commission. He did a general insurance business with us for over twenty years, even before he was in the post office bonds business. He still writes insurance through our office.

He wrote a full general line of insurance.

200 There has never been a period of time when the buildings owned by the two trusts would not have some of their insurance written by Kulp through L. A. Rose & Co.

Trustee's Exhibit 4 for identification, is apparently a commission statement between Jacob Kulp and L. A. Rose & Co. The amounts of commission which appear to have been paid according to Trustee's Exhibit 4 were at the usual and customary rates we would have paid to any broker.

Trustee's Exhibit 6 for identification is a credit memorandum of L. A. Rose & Co. Evidently, the boilers were being put out of service and Kulp suspended the insurance during the time they were laid up and we allowed a return premium of \$80. We paid many thousands of dollars worth of losses on buildings owned by the two trusts.

The premiums for the buildings of the two trusts were considerably reduced through the efforts of Kulp along with our engineer through eliminating hazards.



CHARLES H. TILLMANN

(Redirect examination by Mr. Mulfinger)

I believe we received checks of the different building corporations in payment of premiums.

CHARLES H. TILLMANN

(Redirect examination by Mr. Courshon)

The policy, when written, would go to the broker.

CHARLES H. TILLMANN

(Redirect examination by Mr. Mulfinger)

201 Ordinarily, we do not have any contact with the assured.

JACOB KULP

(Direct examination by Mr. Mulfinger)

I live at 6858 South Shore Drive. I am an insurance broker, manage buildings and do some work for the Empire Cooler Company. At present I am associated with Darrow and manage buildings for him.

The only service I rendered Darrow is the management of buildings. I am personally managing for him Park View Manor, Crandon, Windsor Park, Rogers Park, Los Angeles and New York Station "F".

I have been in business in Chicago since 1920. I originally caused to be erected the various post office buildings owned by the subsidiaries, which were 27 in number. I was employed by Darrow after his appointment and continued in his employ until he resigned as trustee. I had been an officer of the Madison-Kedzie Bank. I caused the securities of various post office buildings to be placed on the market.

About 1929 or 1930, I caused the creation of two trusts. In exchange for the deposit of stock of the subsidiaries, I received securities of the top trusts. I received 300 bonds of Federal plus a certain amount of stock of National and Federal.

I subsequently turned those securities over to Andresen plus a lot of other securities.

When Darrow was appointed trustee, I was living at 6858 South Shore Drive, in one of the subsidiary buildings.

That is the Park View Manor building. I am still living there in the same apartment. I rendered service for Darrow without compensation for about a year. Then, I received a salary of \$300 a month. I never paid rent for the apartment and probably received the apartment as part of my consideration for services.

202 I received gas for my automobile to travel to the buildings, but obtained no money for repairs. My duties were to look after the buildings.

I managed 27 buildings for the trusts. I negotiated most of the leases.

I consulted Darrow concerning everything. My salary was never increased. The fair rental of my apartment was about \$135 to \$140 a month.

I had no written agreement with Darrow but simply an understanding that I would give as much time as was necessary to the buildings. When I was out of the city, I gave him all of my time.

I also conducted an insurance brokerage. I conducted it from my office at the Colonial Securities Company.

I continued my insurance business after Colonial gave up its office.

After Colonial gave up its office, we were with Darrow for about a year before he resigned; and we were with Mosser probably a year after he took over.

There must have been some arrangement about rent, but I don't know what it was unless Miss Johnson would know. I never had any understanding with Darrow about the apartment or anything else except the salary, but I had the use of the apartment since the building was erected. I think the plan made provisions for my use of the apartment.

My salary continued some time after Mosser was there. I think he paid me a salary for a time. I had no conversation with Darrow about my employment. I found out I was on the payroll when I began receiving a credit of a certain amount of money per month.

203 The only thing that was said to me was that I would receive \$300 a month salary.

The stock of Colonial, I believe, was owned by myself, my wife, and Miss Johnson and my son. I caused Colonial to be organized and it is still in existence although we haven't been doing business for some years. Dearborn 8666 has been the telephone number of Jacob Kulp & Co. and Colonial for the last twenty years.

When Darrow resigned, I moved with him and took the telephone number.

204 Hearing Before Special Master Archie H. Cohen
January 29, 1945

MYRTLE JOHNSON

(Further examination by Mr. Mulfinger)

I have prepared a tabulation of various transactions between Colonial and Darrow, as trustee, and between myself and the other people we discussed at the last hearing and Darrow.

MYRTLE JOHNSON

(Further direct examination by Mr. Roberson)

S.E.C. Exhibit 2 shows in the second column on the left hand side the names of the individuals who purchased the securities in Lot 1 not delivered to Darrow. The column on the right hand side shows the amounts which they paid. I sold these securities to these various purchasers. Sales were all made by Colonial Securities Company and I negotiated them.

The total realized on these sales to others than Darrow was \$19,457.50. There was \$6,000 of Station "F" bonds given to Max Levy for his loan. As I remember, Station "F" bonds were selling at 30 at that time.

Thus, the value of the securities given to Levy was \$1,800. Some of these securities were later purchased by Darrow.

MYRTLE JOHNSON

(Further examination by Mr. Roberson)

In the case of each sale shown on S.E.C. Exhibit 2, the bonds were actually delivered to the purchaser. I gave George Peterson \$4,000 in Crandon bonds in payment of the \$350 loan made to complete the sale in the Seligman case.

JACOB KULP

(Further examination by Mr. Roberson)

I was the principal stockholder of Quincy.

205 I was director of Quincy on November 22, 1930, when the \$100,000 dividend was declared, which was payable on January 2, 1941. I think the other directors were Miss Johnson and Lee Kulp.

The only thing I recall about the dividend is that it was a bookkeeping entry which Miss Johnson worked out with our attorneys. I recall having been indebted to some of the subsidiaries of Federal. In the case of Quincy Station, I probably owned the stock and in Jacob Kulp & Co.

I individually did not owe anything to Quincy Station. Quincy Station owed me.

I received the stock of Quincy when it was incorporated, but I gave the stock up when I organized Federal. In exchange I received a certain amount of securities of Federal. When this dividend was declared, I presumed I owned the stock of Quincy. It was my understanding that the dividend was to be simply a bookkeeping entry.

One of the reasons Federal was organized was because Quincy made money and some other stations couldn't pay interest and we had to take from one to take care of the others, so we took the good apples and put them in with the bad apples to organize Federal.

206 Hearing Before Special Master Archie H. Cohen
February 21, 1945

(Report of Frederick B. Andrews regarding certain transactions and securities issued by Federal and its subsidiaries dated June 8, 1942, was marked S.E.C. Exhibit 3 for identification.)

(Report of Frederick B. Andrews regarding certain transactions of securities issued by National and its subsidiaries dated June 24, 1942, was marked S.E.C. Exhibit 4 for identification.)

(S.E.C. Exhibits 3 and 4 received in evidence.)

(List produced by Miss Johnson entitled "Securities Purchased by Paul E. Darrow either for Federal Facilities Realty Trust or Underlying Company from Colonial Securities Company and Myrtle Johnson" and consisting of five pages was marked Trustee's Exhibits 7-A to 7-E, inclusive for identification.)

(A list consisting of three pages prepared by Miss Johnson and entitled "Securities Purchased by Paul E. Darrow either for National Realty Trust or Underlying Company from Colonial Securities Company" was marked Trustee's Exhibit 8-A, 8-B, and 8-C for identification.)

MYRTLE JOHNSON

(Further examination by Mr. Roberson)

I prepared Trustee's Exhibits 7 and 8; they show transactions where Colonial or I was the seller and Darrow or one of the underlying companies was purchaser. So far as I know, the lists are true and complete. I obtained the information from the books of Colonial and my personal records.

Andrews had access to the records of Colonial. These exhibits do not include purchases by the Darrow Chairman Account. These lists do not include purchases by Darrow of the securities in Lot 1 sold in the Seigman case.

207 Trustee's Exhibit 8 includes certain sales which I made to Darrow and the heading of that exhibit should include my name as well as Colonial's.

Looking at the bottom of Trustee's Exhibit 7-B and the top of 7-C, the bond under date of March 5, 1937 came due January 1, 1937. At maturity, the bond was owned by Mr. Landau. The trust indenture stated that no action could be taken on bonds until sixty days after maturity. At the time the bond became due, I accepted it from Mr. Landau and exchanged it for a bond maturing in 1947 which I had previously acquired at 40. I held his bond until March 5, 1937, after which date it was paid. I received the face amount of that bond obtained from Landau. There were a total of five bonds that were handled in this manner, four at the bottom of Exhibit 7-B and one on 7-C.

I received the par value of the bond with interest in all five instances.

I advised these people that if they were desirous of securing their cash on the bonds they received in exchange I would cash the bonds for them at par prior to maturity.

I did not extend the excess of purchase price to the right hand column in connection with these exchanged

bonds shown in Trustee's Exhibits 7-B and 7-C because I did not consider them sales.

I never accounted to Darrow for any of the profits made on any of these transactions in which I was individually concerned, nor did Colonial.

There were instances where bonds purchased by the issuing corporation had been exchanged for other bonds. Records of these exchanges were not made to my knowledge.

I would say that there were not more than half a dozen instances in which bonds of one denomination were exchanged for bonds of another.

208 The explanation of the same bond being bought by an issuing subsidiary at two different times from Colonial without any intermediate resale might be that the subsidiary had exchanged the bond with some third party without a record being kept thereof.

Or there might have been an error made in the number.

When bonds were purchased for sinking fund purposes, they were cancelled immediately; but if bonds were bought to be held in the treasury they were held there. Bonds bought by Darrow, as trustee, were held in the treasury. Bonds bought by Postal were bought for sinking fund purposes and were cancelled immediately.

MYRTLE JOHNSON

209 (*Redirect examination by Mr. Roberson*)

Hearing before Special Master Archie H. Cohen,
March 7, 1945.

FREDERICK B. ANDREWS

(*Direct examination by Mr. Roberson*)

I reside in Glencoe, Illinois and have an office at One North LaSalle Street, Chicago, Illinois. I am a certified public accountant.

Pursuant to Court Order dated January 19, 1942, I made an investigation of trading transactions of the trusts and the 27 subsidiaries.

S.E.C. Exhibit 3 is a report I prepared relative to transactions in the securities of Federal and its subsidiaries. S.E.C. Exhibit 4 is a report I prepared relating to transactions in the securities of National and its subsidiaries.

The contents of the two reports accurately reflect my examination of the books and records subject to the limitations mentioned in the reports and subject to the fact that they contain many items not subject to mathematical proof.

FREDERICK B. ANDREWS

(Cross examination by Mr. Herriott)

We took such precautions in the report that there are probably very very few errors. However, errors in bond numbers would not show on checking so that there might be a few errors in that respect.

FREDERICK B. ANDREWS

(Redirect examination by Mr. Roberson)

These reports reflect as accurately as we could make them the situation that existed but there might be errors in a report of such magnitude.

There are three types of situations shown in the report. In one we have the purchase price and the sale price; in another we have the purchase price but no sale price and in the third we have the sale price but not the purchase price..

210 JACOB KULP

(Further examination by Mr. Roberson)

Hattye J. Kulp is my wife. Her transactions were shown in the books just the same as that of any other customer.

The only bonds I bought to my knowledge were two \$4,000 bonds of Ogden Park and I sold them to Darrow. I think they cost me \$2,000 and I took a loss.

MYRTLE JOHNSON

(Further examination by Mr. Mulfinger)

(A statement prepared by Myrtle Johnson reflecting transactions of Darrow's Chairman Account with Colonial and Myrtle Johnson was marked Trustee's Exhibit 9 for identification.)

(Trustee's Exhibit 9 was received in evidence.)

Trustee's Exhibit 9 is a list of securities purchased by Darrow for the Chairman Account from Colonial and myself.

The Fourth column from the left is the price paid by the Chairman Account to Colonial and myself.

MYRTLE JOHNSON

(Direct examination by Mr. Mulfinger)

In preparing Trustee's Exhibits 7 and 8, I took the transactions up to June 30, 1941, which was the date we ceased doing business as Colonial.

When Colonial sold bonds to Darrow, we made out Colonial's confirmation, which was numbered.

211. The ledger sheet did not show the confirmation but the actual date that delivery was made.

I was very active in the reorganization of the subsidiaries in furnishing various data and material to the attorneys.

I was familiar with the structures of the companies and, working for Darrow, I was familiar with their financial condition. Colonial was the trading house for all the securities since no one knew Darrow or Federal.

I often discussed the market price of bonds with Darrow. I think Darrow would almost expect us to make a profit in our transactions. When he came in, I very definitely told him that we were going to continue the securities business and that I would not continue working for \$250 a month unless I made more money than that paid by Darrow.

I might not have said that we were going to make a profit on the transactions, "but he knew I was not in the business for love".

He bought a great many bonds direct, but he was able to acquire bonds of the subsidiaries from Colonial at a better price than he would have to pay other people during the period of this reorganization.

I don't remember any time when Darrow asked what we paid for bonds which he purchased from Colonial or me. I don't remember telling him our profit.

The exchanges with Landau shown in Trustee's Exhibit 7-B took place about January 1 or 2, 1937, and the bonds we received from Landau were paid at par in March 1937.

I told Landau that the money would be available for him in about two months but he exchanged his bonds for later maturity bonds.

MYRTLE JOHNSON

(Further direct examination by Mr. Roberson.)

212 Shortly after the appointment of Darrow as trustee when I began working for him, I informed him I was going to continue in the buying and selling of securities.

Darrow did not concern himself with the prices Colonial paid. I never told Darrow that I was selling these securities to him at a profit. Darrow knew Kulp and I were to trade in post office bonds.

As I recall it, there were bonds purchased by Darrow with his own funds, which bonds we put up as loans with J. I. Custer & Co. He turned them over to the corporation at the same price he paid for them.

In buying bonds from Colonial, Kulp or myself, Darrow would not, so far as I remember, inquire as to the cost to us. Confirmations were made out only where Colonial was the seller. On any other transactions, a memo bill was made and Darrow received a copy. The memo bill was on the letterhead of Federal or National and had the name of the company purchasing on it.

I did not tell Darrow where we had gotten the bonds. Darrow fixed the prices of the securities which we sold to him unless there was a price fixed by a trust committee. For 6748 Crandon Avenue, the Board decided a price. Grand Rapids had a trustee appointed by the Court. The Board fixed a price for Los Angeles. A committee fixed the price for Postal. In the case of 6929 North Clark Street, it was bondholders. On Windsor Shore, it was the Board of Directors. Darrow was a member of the Board of each of these corporations.

I was a member of the Board of some of the corporations. Park View, a large corporation, had a Board of Directors. Dallas had a trust committee. Irving Park had a Board of Directors.

Ferry Station had a trust committee. Quincy has a voting trust arrangement and two of the voting trustees are members of the Board which fixes the prices to be paid for bonds.

213 In the case of some subsidiaries some leeway on the purchase price was given to Darrow. In other words, a bond might be purchased from 20 to 25 or 30 to 35. It changed on the amount of money available.

Other companies would fix a top price. If a bondholder dealt with the subsidiary, he would get somewhere between the upper and lower figure, or in case of a fixed price, he would obtain the fixed price, in most instances. I don't know whether Darrow bought any bonds at less than the fixed price. On substantially all of the bonds, I knew what these fixed prices were at all times.

With respect to the companies which had prices fixed by the Board or committees, I have purchased bonds for myself or Colonial when I knew the prices fixed were greater than the price we were paying and our salesmen had done the same thing. Our salesmen would work out a trade with customers when they knew the bonds were taken by the company's sinking fund. They had that price to work on. We may have disclosed to the seller the highest price that was fixed by the committee.

Where there was a fixed price, the price which Darrow paid would be within the limits set by the Board or Committees. When there was no fixed price, Darrow would figure out the price, considering the condition of the building, its rental condition, the number of bonds, etc.

After Darrow fixed a fair price in his mind, he would discuss with me various factors in connection with it; but he decided in the first place what the price should be. Some times after talking with me, he has changed the price. Some times the prices were lower. Darrow was familiar with the conditions of the property and its financial structure. Anything I said would not make much difference.

I don't recall any case where we sold to Darrow at less than the fixed price. Darrow never tried to have us sell bonds to him at less than the fixed price. The Boards in many instances left it to Darrow's discretion to buy bonds at lower or higher figures, depending on how the bonds came in but some times he would suggest to the committee that it would be advisable to raise the price. In certain cases, he took my advice to the effect that he should consult the committee in regard to prices to be paid for bonds.

214 Some times I entered into the discussions when the committee was present regarding the price to be paid for bonds. Darrow never asked the profits Colonial or I made on bonds.

He never asked for an accounting on profits received by me, nor has he asked regarding Colonial's profits, so far as I know.

MYRTLE JOHNSON

(Further direct examination by Mr. Mulfinger)

The bonds in Lot 1 not taken by Darrow were retained by me and Colonial. Trustee's Exhibits 8, 7 and 9 do not show a disposition of those securities held by me.

That is shown in S.E.C. Exhibit 2. Some of those securities were later sold to Darrow.

215 Hearing before Special Master Archie H. Cohen
June 12, 1945

CLAIRE M. MARQUISS

(Further examination by Mr. Mulfinger)

I have been continuously employed by Mr. Mosser since his appointment as successor trustee. Prior to that time, I was employed by Darrow.

The trusts have not purchased any bonds since Mosser has been in, so far as I can recall.

In fact, I will make that positive. The trusts have not purchased any bonds since Mosser has been in. Kulp continued in his employ approximately two months until the end of September when Carroll took his place.

Miss Johnson continued in his employ until the end of September 1943, which was about a month and a half. When I previously stated that Miss Johnson had purchased bonds for Mosser, I simply meant that she would know of bonds that we being offered, inform him of that fact and if he desired then she would convey the message to the owner of the bonds. Then, Mosser would buy them.

She had no interest in those bonds. Kulp received nothing from the trusts except his salary of \$300 per month. The subsidiaries paid the expenses of his automobile.

If Kulp entertained a prospective tenant in connection with the lease, such expense would be reimbursed to him and charged to the building. I simply cite that as a possible item. I do not know that there was specifically such an item, but Kulp was reimbursed for expenditures in connection with the buildings.

We kept an insurance record in which Myrtle Johnson made most of the entries.

216 (Pages of the insurance records were marked Trustee's Exhibit 10 and 10-A for identification.)

Practically all of the entries are in the handwriting of Myrtle Johnson.

(A bill or statement of L. A. Rose & Co. was marked Trustee's Exhibit 11 for identification.)

I had occasions to make out checks to L. A. Rose & Co. in payment for bills rendered by it. Darrow signed the checks. Those bills were similar to Trustee's Exhibit 11 for identification.

(Envelope containing a schedule consisting of 92 sheets setting forth the various policies written, the number, the dates, the commissions and the premiums paid was marked Trustee's Exhibit 12 for identification.)

Trustee's Exhibit 12 was received in evidence subject to verification.

CLAIRE M. MARQUISS

(Recross examination by Mr. Herriott)

While Miss Johnson remained in Mosser's employ, she told him of bonds available for purchase from time to time. Some of them were purchased by Mosser. When I stated previously that Mosser made no purchase of bonds, I meant in his capacity as trustee of the top trusts. He bought bonds for the underlying companies.

Mosser determined what the holder of the bonds should get.

Since Miss Johnson left, I know of one instance when she advised him that bonds were available. He bought part of the \$5,000 bonds on 22nd Street and the rest have been committed as soon as funds are available. I believe we bought the first bonds in February 1945.

At present Albert Carroll manages 22 of the buildings and Darrow has five.

217 Carroll receives \$300 a month. His expenses are paid by the subsidiaries. Darrow is still managing Crandon.

He also manages Park View, Rogers Park, which is 6929 North Clark Street, Windsor Shore and Los Angeles.

The buildings managed by Darrow have more tenants than the remaining buildings because two are a straight apartment building and two are combination post office and apartment building.

GERTRUDE JOHNSON

(Examination by Mr. Mulfinger)

I live at 7012 South Shore Drive and was formerly employed by Darrow, as trustee during all the time he was in office. I kept the insurance record. Trustee's Exhibits 10 and 10-A are part of that record. Part of the entries are in my handwriting and part in Mr. Marquiss's.

(Trustee's Exhibits 10 and 10-A were received in evidence.)

(Trustee's Exhibit 11 was received in evidence.)

The figure 15% appearing on Line 10 of Trustee's Exhibit 10-A is really a commission and is taken from the bill from Item 3 on Trustee's Exhibit 11 which represents the commission paid. The Figure 3 represents 15%. If there had been 5, I would have put in 25%. I believe Marquiss directed me to make these entries.

GERTRUDE JOHNSON

(Cross examination by Mr. Herriott)

Trustee's Exhibits 10 and 10-A record the insurance only on 6748 Crandon.

Trustee's Exhibits 10 and 10-A cover the period from December 5, 1934 to October 1, 1944.

218 Hearing before Special Master Archie H. Cohen
July 25, 1945.

(Statements of Counsel indicate that information was being gathered for the purpose of preparing a stipulation as to the trading transactions.)

Hearing before Special Master Archie H. Cohen
November 8, 1945.

MYRTLE JOHNSON

(Direct examination by Mr. Mulfinger)

(Counsel for trustee amends Trustee's Exhibit 12 by adding Page 88-A and substituting a new Page 92, which is the recapitulation Amended Trustee's Exhibit 12 received in evidence subject to verification.)

(A document consisting of 17 pages pertaining to bond transactions of subsidiaries of Federal was marked as S.E.C. Exhibit 5 for identification and received in evidence subject to further verification.)

(A document consisting of 27 pages pertaining to bond transactions of subsidiaries of National was marked as S.E.C. Exhibit 6 for identification and received in evidence subject to verification.)

Hearing before Special Master Archie H. Cohen
November 15, 1945

(Mr. Mayer stated that on Page 14 of S.E.C. Exhibit 6 a loss item inadvertently appears and the Master stated it would be satisfactory to delete that item on the face of the exhibit.)

(Mr. Mayer stated that he had appended to S.E.C. Exhibit 5 and 6, respectively, a summary of the totals shown on the various pages.)

219 (The Master permitted the inclusion of the summaries and stated that the record may show that S.E.C. Exhibit 5 consists of 18 pages instead of 17 and S.E.C. Exhibit 6 consists of 29 pages instead of 27.)

(The Master stated that on Page 14 of S.E.C. Exhibit 6 the loss item of \$6.25 may be deleted.

(S.E.C. Exhibit 5 and 6, having been verified, were received in evidence.)

PAUL E. DARROW

(Cross examination by Mr. Mayer)

I am the former trustee of Federal and National. In Exhibit B attached to my final account in Federal, I have shown receipts of \$168,662.16. Page 1 of the detailed

schedules shows receipts of \$166,448.14. I can't explain that difference. Said Exhibit B shows disbursements of \$168,662.16 and operating expense of \$121,910.15. Page 1 of the detailed schedules shows operating expense of \$119,696.13.

I can't explain the discrepancy. Schedule 2-L of the detailed schedules in Federal shows interest received of \$980.00. An addition of the figures gives \$1,080 which is \$100 more than is shown in the schedules.

Schedule 3 of the detailed schedules in Federal headed "Advances to subsidiary companies" shows advances made by me to the subsidiaries.

At the time of my resignation, there was a balance of \$4,020 due me from the subsidiaries. I made the loans by my own authority and not supported by Court Orders. The Chairman Account made purchases or sales of subsidiary bonds.

Exhibit E attached to my final account in Federal shows total of purchases and sales of bonds by the Chairman Account but there are no detailed accounts of the bond purchases. Exhibit C attached to the final account of National shows receipts of \$161,137.26. The detailed schedules in National shows total receipts of \$163,202.26.

220 I can't explain this discrepancy. Exhibit C attached to the final account in National shows disbursements of \$156,758.24. Page 1 of the detailed schedules shows disbursements of \$158,823.24. I can't explain that discrepancy. Exhibit C attached to the final account in National shows \$47,469.25 expended for the purchase of bonds.

Page 1 of the detailed schedules shows \$49,534.25 expended for the purchase of bonds. I cannot explain the discrepancy. I am satisfied that my final report and account and detailed schedules filed in the National case are correct.

Exhibit E attached to the final account in Federal shows that when I took over the par value of securities of the subsidiaries of both trusts in the Chairman Account totalled \$77,992.50. The left hand column on Page 1 of said Exhibit E indicates the par amount of securities received by me for the Chairman Account. Page 2 of said Exhibit E in the left hand column indicates the par value of securities purchased in the Chairman Account.

Page 4 of said Exhibit E in the left hand column indicates the par value of securities which I received on June 1, 1935, for the Chairman Account. Thus, the securities contained in Exhibit E indicate the securities on hand when I took over the Chairman Account, the par value of the securities purchased, the par value of the securities sold and the par value of the securities on hand at the time of my resignation.

221 Hearing before Special Master Archie H.
Cohen November 30, 1945

(A photocopy of "minutes of first meeting of Board of Directors of Quincy Station Post Office Building Corporation" held December 11, 1925, consisting of the first 8 pages was marked S.E.C. Exhibit 7 for identification.)

(A photocopy of the last 9 pages of the minutes of the first meeting of the trustees of Federal held on September 10, 1929 was marked S.E.C. Exhibit 8 for identification. A photocopy of the "Minutes of Special Meeting Board of Directors of Quincy Station Post Office Building Corporation" held on November 22, 1930, consisting of three pages was marked S.E.C. Exhibit 9 for identification.)

(A photocopy of a letter from Scovill Wellington & Co. to Darrow consisting of three pages to which is added two pages of the Analysis of Earned Surplus contained in Report of Charles Banks & Co. as at December 31, 1931, and also two pages consisting of a letter from Jacob Kulp to Quincy dated December 10, 1925, was marked S.E.C. Exhibit 10 for identification. A photocopy of a Complaint in the Circuit Court No. 35 C 16826 in the case of Quincy vs. Kulp, et al, was marked S.E.C. Exhibit 11 for identification.)

(A photocopy of a motion to dismiss the said complaint in Case No. 35 C 16826 was marked S.E.C. Exhibit 12 for identification. A photocopy of an order dismissing by agreement said Case No. 35 C 16826 was marked S.E.C. Exhibit 13 for identification. A photocopy of a Complaint in the Circuit Court No. 35 C 16827 entitled "Marie H. Boord vs Jacob Kulp, et al" was marked S.E.C. Exhibit 14 for identification.)

(A photocopy of a motion to dismiss said Case No. 35 C 16827 was marked S.E.C. Exhibit 15 for identification.)

(A photocopy of an order dismissing by agreement said

Case No. 35 C 16827 was marked S.E.C. Exhibit 16 for identification.)

Mr. Roberson offered in evidence S.E.C. Exhibits 7 to 16, inclusive.

222 The Master let said exhibits be received subject to objections and reserved the ruling on their admissibility.

223 Hearing before Special Master Cohen
December 7, 1945

PAUL E. DARROW (Cross examination by Mr. Roberson pursuant to Rule 43(b) Federal Rules of Civil Procedure)

I previously testified, with reference to Exhibit E attached to my final account, that the respective amount of bonds on hand on June 1, 1935, purchased, sold and the amount on Hand September 30, 1933, were correctly stated.

According to said Exhibit E, I started out with bonds in the "Chairman Account" on June 1, 1935, totalling a face amount of \$23,900.

Said Exhibit E shows that I purchased a total of \$200,300 of bonds, making a total of bonds on hand and purchased in the amount of \$224,200.

Exhibit E shows that I sold \$153,000 in bonds. Subtracting the latter figure from the total of bonds on hand and purchased would leave a remainder of \$71,200.

However, according to Exhibit E, the actual bonds on hand amounted to \$50,000.

(After Mr. Roberson asked if there was not a shortage amounting to this difference between \$71,200 and \$50,000 in bonds on hand, Mr. Herriott interposed and stated that if any discrepancy existed they would attempt to explain it.)

Schedule 3 of the detailed schedules shows advances to subsidiaries of \$76,013.50 and repayments of \$69,513.50, leaving an unpaid balance of \$6,500. I made these advances under the general authority given me by the order of appointment but there was no specific authorization for these loans. They have been repaid.

224 I had knowledge of the filing of the complaints in the case of Quincy Station and Marie Boord against

Jacob and Lee Kulp and Myrtle Johnson. When the complaints were filed, the stock was held by voting trustees; but when the bonds became due the stock would then become the property of Federal Facilities.

I was one of five directors of Quincy but not a voting trustee. I was trustee of Federal Facilities which included among its assets the stock of Quincy. The voting trust was simply a device to give added protection to bondholders. From June or July 1935 until August 1943, I was president of Quincy and on the Board. In November of 1935, the directors of Quincy were Franklin Kester Elmer R. Weber and Paul E. Darrow.

I agreed to a dismissal of the Quincy suit vs Jacob Kulp, et al, because the Board ordered it done.

There were many cases when there might be a conflict between my interest as trustee and my official connection with the subsidiaries. In every case I tried to do everything proper for the subsidiaries without reference to the parent. I knew that as trustee it would be better for me to take that position for the subsidiaries. My first interest was always with the subsidiaries but I knew "it was the best business for the parent trusts".

I think I received authority from the District Court in which the Quincy case was pending to dismiss the suit against Kulp, et al. The voting trustees for Quincy were appointed before the conclusion of the 77(b) reorganization, but it might have been part of the final business in the case.

While Quincy was in reorganization, I was in charge of running the business as president of the corporation appointed as a result of my being trustee.

I can explain why the suit against Kulp, et al, was dismissed. The members of the Board were not in sympathy with the suit and none of them wanted to prosecute it because they thought it lacked merit. When our lawyer stated that we would have to decide whether or not to prosecute the case, the Board asked the attorney to report all its prospects and requested me to obtain a Hill's report on the defendants. At the next meeting we had the Hill's report and the letter from the lawyer. The lawyer in his letter said it could not be handled on a 225 contingent basis and it was doubtful if he could get a judgment which might or might not be collectible. The Board decided it would not be worth-while to put

any money in the suit, so they voted to dismiss it and under that instruction I ordered it dismissed. As president of Quincy, I was of the opinion that it should be dismissed.

I personally felt that the suit should be dismissed based on my investigation, the letter from the lawyer and my doubts as to the collectibility of the defendants.

I never heard of Marie Boord until a few days ago.

(Copy of debtor's petition for leave to dismiss the case of Quincy vs Jacob Kulp et al, filed July 20, 1938, was marked S.E.C. Exhibit 17 for id.)

(Copy of order dated July 20, 1938 dismissing case of Quincy vs Kulp, et al was marked S.E.C. Exhibit 18 for id.)

(S.E.C. Exhibits 17 and 18 were received in evidence.)

I was wrong when I said I never heard of Marie Boord because Mr. Williamson's letter of February 3, 1938, mentions her. However, I never met her. I have no recollection of causing the Boord suit to be dismissed.

(Witness was asked if his recollection was not refreshed by the statement on Page 2 of S.E.C. Exhibit 17 to the effect that on November 18, 1935, Quincy caused *two* bills in equity to be filed against its directors. The witness stated:)

This does not refresh my recollection. I presume my lawyer recommended it be handled that way. I would say that the statement in the petition is correct.

The reasons for my asking the Court to ratify the dismissal of the suit thirty-five days previously was that the defendants were not collectible, the case would prove expensive and the prosecution of the proceedings was not advisable.

226 I did not tell Judge Holly any other reasons for dismissal. Jacob Kulp and Myrtle Johnson, two of the defendants in that suit, were in my employ, as trustee, when the two suits were filed and remained in my employ for some time after its dismissal.

Mr. Kulp was not on the payroll at the start but gave us free service. When the business would stand it, I put him on the payroll. Miss Johnson was on the payroll during my entire trusteeship at \$250 a month.

Kulp was in charge of the physical properties. He had an office in an adjoining suite for the last year or two.

He had access to the books and records of the subsidiaries. In a general way, he was well informed about the financial condition and operations of the subsidiaries but obtained most of his information from Miss Johnson or me and not from the books. "However, he was entitled to and welcome to all the information he wanted."

Miss Johnson helped on everything in running the office. She always answered all the questions of bondholders. For many years I didn't become sufficiently familiar to answer the letters myself, although later on I did. Miss Johnson was always the one people came in to see; and if she wasn't there, they would ordinarily wait for her. She was thoroughly familiar with the whole operations and in charge of the whole office and in charge of practically everything. She had charge of my books and records, as trustee, and also the books of the subsidiaries.

While the two suits were pending, I did not discuss with Miss Johnson or Jacob Kulp the question of liability or collectibility. I never asked either of them for a statement as to their assets or liabilities.

I knew that Kulp had turned over everything he had to the Kulp-Andresen trust. I made no investigation beyond ordering the Hill's report.

I undoubtedly told the Board of Quincy that I was satisfied there was no chance to collect. Mr. Kulp had signed many repurchase agreements for bonds, and I knew that he did not have the money required to fulfill such an agreement. He went broke because he tried to keep them. I investigated Lee Kulp's collectibility only to the extent of the Hill's report.

227 I don't remember whether Lee Kulp or Miss Johnson signed repurchase agreements. I made no inquiries as to what assets any of the defendants had. I didn't know that Miss Johnson owned any of the securities of the top trusts or subsidiaries. I did know that some of the securities were in Jacob Kulp's name but he had no beneficial interest in them. These were securities he had put up for loans and they were in the Kulp-Andresen trust.

Those were the securities later sold in the Seligman suit sold by Master Bolton. Until August 1943, I was of the opinion that the certificates of beneficial interest of National had value. I don't know now the way money

is being spent. I knew that up to August 1943 Jacob Kulp had a substantial block of such certificates but they were up as collateral in the Kulp-Andresen trust.

I think that about 45,000 shares of National were outstanding. I do not know whether or not 20,298 shares stood in Jacob Kulp's name.

I know Jacob Kulp borrowed a large amount from Joseph Baumann and put up National, and I think, Federal shares as collateral. I didn't ask Kulp if the shares in his name were pledged, but I know they were. I am not sure that the shares stood in Kulp's name but had been told shortly after my appointment either by Kulp, Miss Johnson or Baumann that he owned a substantial block.

I undoubtedly knew about the certificates at the time the two Circuit Court suits were dismissed. I told the Board that Kulp owned shares of National. I also said they were pledged.

I think it is true that the Hill's report did not state that the defendants were judgment-proof but I was satisfied from the report that we could not collect.

228 Hearing before Special Master Archie H. Cohen
 December 20, 1945

(Seven page photocopy of "minutes of special meeting of the Board of Directors of the Quincy Station Post Office Building Corporation held June 7, 1938, was marked S.E.C. Exhibit 19 and received in evidence. Five page letter dated February 3, 1938, from Adams, Nelson and Williamson to Board of Directors of Quincy was marked S.E.C. Exhibit 20 and received in evidence.)

PAUL E. DARROW recalled under Rule 43(b)

(Cross examination by Mr. John I. Mayer)

I think I have seen S.E.C. Exhibit 10 previously. I received the document and I think it came through the mail.

(Cross examination by Mr. Mulfinger)

I was appointed trustee of National and Federal in the Spring of 1935 and was authorized to and did employ Adams, Nelson and Williamson as my attorneys. I continued to act as trustee until August 1943, and those at-

torneys represented me during that time. Prior to my appointment, I did not know Jacob Kulp, Miss Johnson or Louis Goldman.

After finishing school in 1904, I had several different jobs. In 1907 I went to Greeley, Colorado, to rebuild a gas company and acted as its manager and operator for twenty-one years before returning to Chicago. I then became associated with the old Amalgamated Trust and Savings Bank. Thereafter, I was with David A. Noyes, stockbrokers, for five years doing statistical work. I was then appointed trustee in these cases.

After my appointment as trustee, my office was at 29 South LaSalle Street for the two trust companies and the subsidiaries.

When I was appointed, I found the books of the trusts and subsidiaries in the office and ascertained that they had a variety of stocks and bonds and some cash.

The subsidiaries had separate books, which I examined. We employed about eight or ten people, among whom were Jacob Kulp, Miss Johnson, Mr. Marquiss, Miss Katz, Miss Gertrude Johnson and Mrs. Anita Aaron. I
229 occupied that office about a year. It was also occupied by Colonial Securities Corporation.

I agreed that Colonial might continue to occupy the same office. I ascertained by inquiries what business Colonial was in. I understood that Jacob Kulp, Miss Johnson and Lee Kulp owned the greatest amount of the capital stock. When we moved Colonial had a separate suite adjoining the one I was in.

We moved to 100 West Monroe Street. Miss Johnson was in the suite of National. Mr. Kulp spent most of his time working for me but furnished his own office. The books of Colonial, the two trusts and the subsidiaries were kept in the same room and entries were made in them by the employees of Colonial and of the trusts. Colonial's books were available for my examination and the employees of Colonial could examine the books of the trusts if they desired.

I ascertained that Jacob Kulp was instrumental in selling some of the securities of the buildings to the public. I learned that Miss Johnson had been in the employ of Kulp for quite a few years. I employed her immediately after my appointment. I know that she assisted in the

management of the subsidiaries after my appointment, and I believe she had done so previously.

I paid her a salary of \$250 a month. Mr. Kulp started helping me immediately and continued until I resigned. I put him on a salary in 1937 or 1938.

I paid him \$300 a month to take physical charge of the properties. One of the companies furnished him a flat to act as resident manager. The top trusts paid him nothing else, except out-of-pocket expenses. Miss Johnson was to receive nothing beyond her \$250 a month.

I don't remember what names were on the door at 29 South LaSalle Street. I think the telephone service that we received had been contracted for by Colonial and we used the phones jointly. I knew they were in the business of buying and selling securities of the subsidiaries. Telephone bills came to Colonial. I made the division as to costs with Miss Johnson. She was employed by Colonial at that time.

230 I kept in pretty close touch with Colonial and had a pretty good idea of the volume of business it was doing. There was an allocation of office rent at 29 South LaSalle Street.

I employed Mr. Marquiss as chief accountant. Except for the first two months, I devoted practically all of my time to the business of the trusts. Practically all the plans of reorganization of the subsidiaries contained provisions under which I would manage the properties. I was elected president of all the subsidiaries shortly after my appointment. I was paid a managing fee which I turned over to the top trusts. I think I was the only one authorized to sign checks for the top trusts.

There was always a memorandum attached to each check showing what it was for. This was true in the case of checks issued for the purchase of bonds.

I did not destroy checks but I destroyed many cancelled vouchers—in 1939 or 1940. I think the cut-off date was December 31, 1937. The securities of the Kulp-Andresen trust were not turned over to me but to Melvin Hawley. The Kulp-Andresen trust had all of the securities Kulp & Company had at the time it went into bankruptcy. A trustee was appointed after some federal agency investigated it.

Any services rendered by my attorney by keeping in touch with the *Seligman v. Kulp* case were voluntary and

not under my instructions. I did not discuss that situation with Miss Johnson, so far as I remember.

I did not discuss it with Mr. Goldman, nor with anyone else. I had a list of the securities turned over to Hawley and which contained many bonds issued by the subsidiaries.

Burke Williamson was generally my attorney in the case of the trusts. I did not learn what the litigation was about in the Seligman case. I attended the meeting of the Board of Quincy on June 7, 1938.

At this meeting I stated that this report gave little information but raised the presumption that a judgment might produce some money. This was inferred because a few years ago Jacob Kulp & Co. possessed about \$200,000 in bonds of the subsidiaries and Jacob Kulp owned the controlling stock of said company. I further stated that I probably understood the report better than the rest because of my close association with the defendants during the past three years.

231 I added that I knew that said bonds had been turned over to Andresen, my predecessor. I added that the bonds had been obtained by Jacob Kulp & Co. in exchange for securities of the top trusts and the Department of Justice asked that the assets of Jacob Kulp & Co. be turned over to Andresen for exchange back to the original owners. I met Goldman three or four months after I became trustee. Before the sale in the Seligman case I knew it was expected that the bonds would be sold as a block.

I had a list of the bonds that were to be sold. I wanted to acquire all of them. I don't think I made a pencil memorandum of the bonds I wanted before the sale was confirmed.

I made up such a list at some time and probably gave it to Miss Johnson. I gave Miss Johnson checks totaling \$12,400 to purchase bonds and this was probably after I made the list. I think these checks were drawn on the subsidiaries and the two top trusts. I think the memorandum usually attached to checks were attached to these.

I discussed the matter of these bonds in this case prior to the time the sale was held with Miss Johnson. I asked my lawyer to get permission of the Court to buy these bonds.

The Court refused permission to buy the bonds. I did buy some of the bonds after the sale. I did not instruct my attorney to attend the sale and did not know he would do

so. The attorney did not report back to me and I did not discuss the matter with him after the sale. I believe my checks of \$12,447 to purchase the bonds in the Seligman case were made payable to Miss Johnson or Colonial. It was my way of doing business to make checks payable to the person I purchased bonds from.

I did not ascertain from Miss Johnson the sale price of the bonds in the Seligman case. I bought them from Miss Johnson and I don't know whether she was handling them for someone else or for Colonial. I made checks as she asked. I did not ask what she paid for them. It was not any of my business if an employee made a profit. I did not receive any advice from my attorney against allowing the purchase of bonds by employees or against buying through employees. I never asked Miss Johnson what happened to the other securities in which I was interested in the Seligman case. The first time I heard of their disposition was in this hearing room. It is possible that Goldman could have told me he was holding them and I had forgotten that fact.

232 I gave Miss Johnson the checks may be a couple days or a week prior to their delivery. We usually received bonds when we paid for them. I don't know whether Miss Johnson gave any reason for the delay in that case.

When I purchased bonds from Miss Johnson, I did not inquire as to whether she was making a profit.

I did not know that Goldman was interested in the Seligman case.

My attorney in preparing the petition for leave to purchase at the Seligman sale had a list of the securities. I was interested in purchasing them as being beneficial to the estate.

I did not discuss the Seligman case with Miss Johnson. I did not want to speak about it because it incensed me to know that I lost a chance to improve the position of the trusts. I subsequently learned that the bonds of the subsidiaries were sold in one lot and the other securities in another. I think it was at these hearings that I learned that the bonds in Lot 1 sold for \$8,050.

I was in Court when certain parties were seeking an investigation of my accounts, but I did not hear the statement that considerable money had been lost to the trusts by manipulation of the bonds in the Seligman case. I know

that Mr. Andrews was appointed to make the investigation. I received copies of his reports.

I am not sure that I read in the Andrew's report that an improper profit of \$20,000 was made on the Seligman case.

I read just the first few pages of one report and did not look at the other.

I presume my attorneys discussed the Andrew's report with me.

My attorneys made no recommendations to me regarding the Andrew's report. I have never read them.

233 (In response to the Master's question whether he would read the Andrew's report before the next hearing, the witness said he would not because it is full of inaccuracy. Mr. Herriott said he had no doubt but that Mr. Darrow would read it.)

234 Hearing before Special Master Archie H. Cohen
January 11, 1946

PAUL E. DARROW

(Cross examination by Mr. Mulfinger)

I have read the Andrew's report since the last session.

I checked through the schedules to some extent. I think I was in court the morning the order was entered regarding the investigation.

(Mr. Roberson stated that the order was entered January 19, 1942.)

I did not discuss the matter of the Andrew's investigation with my attorney, except to give him the report and let him read it. I don't remember that my attorney discussed the matter with me prior to the time the investigation was ordered.

The offices occupied by Colonial and Mr. Kulp were in a suite adjoining my office. There was no door between them. There was a partition between and an opening that could take a door but there was no door.

I did not assign any duties to Miss Johnson or any employees. They had sufficient judgment to do anything that was necessary. It was my intention to permit her to do as she pleased. She was in general charge of the office and of seeing people that came in and of answering correspondence. She was the one who saved the two top trusts by helping in the reorganization of the subsidiaries.

She was thoroughly familiar with the financial set-up of the subsidiaries.

She was familiar with the financial position of the top trusts. In many instances bondholders would ask for Miss Johnson when they came in. She had authority to negotiate for this purchase of bonds but always subject to my approval. In two or three of the reorganization agreements, I was paid a fee for my services. I received and retained these fees. I did not turn them in to National or Federal. I never owned any bonds of the subsidiaries, except that on two or three occasions I bought some—not to keep but to turn over to the companies as soon as they had the money. I did so in each case at cost to me.

My interest in the reorganization of the subsidiaries resulted from my being trustee of National and Federal. I knew George Peterson and that he was related to Miss Johnson.

235 I met Emma Johnson and knew she was related to Myrtle Johnson. I knew Gilbert Johnson, Myrtle's brother, and I knew Max Levy. Max Levy came to the office frequently to see Mr. Kulp. I knew Sarah Levy and the Baumanns.

I knew that Colonial was engaged in the buying and selling of securities of the subsidiaries, of the two top trusts and all kinds of securities.

Colonial was the successor of the originating house of the subsidiaries' bonds and so naturally the market was there. Other security houses usually referred their inquiries to Colonial. I purchased many bonds of the subsidiaries on their behalf from Colonial.

I purchased bonds of the subsidiaries from Colonial on behalf of the Chairman Account and Federal and National.

I never asked Miss Johnson what she paid for bonds of the subsidiaries I purchased from her. I never asked what price Miss Johnson or Colonial paid for securities of the top trusts which I purchased from them. I never discussed with my attorney my purchase of bonds from my employees or Colonial and he did not know I was making such purchase.

In showing bond transactions on our books, we were not particular about numbers. I signed a petition seeking leave to purchase the securities in the Seligman case and it was not granted.

About two years later, I determined to buy some of the securities. Miss Johnson did not tell me that Tauber was purchasing them at the sale for her.

I remember that Miss Johnson testified that she told me that Tauber had purchased the securities on her behalf, but as far as I remember I don't think she did tell us.

Miss Johnson didn't tell me about Tauber purchasing for her before she bought the bonds, nor did she tell me how she was raising the money.

When I bought part of the Seligman bonds, I don't know whether I understood I was participating in any transaction Miss Johnson had arranged or not. I know before I gave her checks, I had agreed to buy certain bonds from her.

As far as I can remember, she said she had a chance to buy some bonds and asked if I would like them. As far as

I can remember, she never told me the source of them.
236 I made a list of the securities I was going to get.

Those bonds were for future delivery.

I can tell by looking at this document (list of bonds from Lot 1 purchased by various subsidiaries, top trusts and the Chairman Account) that I drew checks on various subsidiaries, the two top trusts and the Chairman Account to purchase the bonds.

I think the bonds were purchased on May 16, 1938, the date this document bears. This document being Trustee's Exhibit A, of January 3, 1945, also lists the prices I paid for the bonds.

I don't think I asked Miss Johnson the source of the bonds, and I don't know from whom I was buying them.

I frequently gave Colonial checks for bonds three or four days before delivery, but I think I never did this with outside companies. I don't think I did this with Miss Johnson but I think I would have if she wanted me to. After the subsidiaries were reorganized, I still was president.

In some cases, I was a member of a trust committee. I was manager of the physical properties of the corporations. I realized after the reorganization that I owed a duty to the stockholders and the bondholders.

I felt it was my duty to buy bonds as cheaply as possible. The management fees that I received were turned in to National or Federal. Practically all of the insurance was written through L. A. Rose & Co. I think I saw the name

of Jacob Kulp on the bills. I felt that he had some interest in the insurance but did not inquire why his name appeared on the bills.

I did not inquire of Jacob Kulp what interest he had in the insurance premiums paid by Federal. I know that he was acting as broker. I felt that my employees were entitled to take part of the commission. I do not know whether Kulp received the commission.

I knew Kulp expected commission and that refers to all the subsidiaries of the top trusts. I know Kulp was interested in the commission paid.

PAUL E. DARROW

(Cross examination by Mr. Roberson)

I never made inquiry when and where people got bonds I purchased or what they paid for them. I never made any effort at all to ascertain and did not know whether 237 Kulp, Johnson or Colonial made profits out of these bonds that I bought from them. Colonial books were available but I did not examine them. It is easily possible that Colonial, Johnson and Kulp made profits on these transactions, and I didn't think it was any of my business.

After the filing of the Andrew's reports, I did not take up with them the matter of these profits. I made no effort to recover the profits from Johnson or Kulp or anybody else.

I knew that Mr. Kulp, Miss Johnson and Lee Kulp held the majority of Colonial stock, but I was never told that they were the sole stockholders. I did not know and never tried to find out who owned the stock of Colonial. I knew that Colonial was under the control and domination and operation of Miss Johnson and Jacob Kulp.

Miss Johnson, as one of my employees, had information regarding the operations of sinking funds. I, not Miss Johnson, determined how much earnings were available for placing in the sinking fund to retire outstanding bonds.

She assisted me in that work. I always showed her the figures after I arrived at them and Miss Johnson was familiar with them and Mr. Kulp could have had the information if he wanted to. In every instance, Miss Johnson knew the price that I authorized for the purchase of bonds for the sinking fund.

I believe every time we communicated with bondholders we told them what we were paying for bonds or at what rate recent purchases had been made; except in one or two instances the sinking fund did not call for tenders. The general practice was for me to determine how much money could be used for that purpose. I established a price.

If the bonds came too fast, we would lower the price. I have dealt in securities for more than forty years and think I am fairly competent to decide upon a reasonable price. I had daily quotation sheets in which many of our issues were quoted and I knew the price of similar bonds.

Once in a while, Colonial showed a bid price for bonds of the subsidiaries.

Miss Johnson would know I was in the market for bonds without any advice from me. She knew I wanted to buy all the bonds that I had money to pay for and she knew or could have known the extent of the money available, because she had access to all the books. I never knew whether Johnson and Kulp were selling to me as principal or agent.

238 I never inquired. I did not feel I owed a duty to find out. I did not make any assumptions as to whether or not Johnson and Colonial were selling to me at the same price they paid. I was willing to pay a certain price for the bonds and took them at that price.

I did not regard it my duty to find out if I could buy the bonds more cheaply from them than the price they were asking. I knew what the market was. I do not know whether they had bought the bonds at prices lower than the sale price to me. I know that now.

I remember no particular case, but I know that at times Johnson or Kulp must have told me that a bondholder who came to the office wished to sell his bonds and asked if I would like to buy the bonds at a certain price.

Frequently, we bought bonds directly from bondholders and this happened more often in later years when people began to know who I was. I presume that if I was unable to buy particular bonds and I was offered such bonds that I may have referred the person interested in selling the bonds to Miss Johnson or Colonial as a prospective purchaser.

That would be the ordinary thing for me to do, but I do not recall any instances.

I thought and still think that the price at which Miss Johnson sold bonds to me was a personal matter and I did not inquire into such personal matters.

I frequently discussed prices with Miss Johnson. Many times she advised me not to raise the price I was paying for bonds. She objected to increasing the price as many times as she agreed to an increase.

If bonds did not come in fast enough, we frequently talked over whether the price was too low and after the price was established then anybody that offered bonds, including Johnson and Colonial, would get that price. That price would continue until Miss Johnson and I got together and changed it. When a bond was bought, we had a sales slip showing who sold them, the price paid and the amount of the transaction.

I would know from whom I was buying and make out a check to that person. Thus, I knew that I was buying in many instances from Colonial and Miss Johnson. I never inquired whether they made a profit. I do not know whether it ever occurred to me that although I was interested in buying at the lowest price that Miss Johnson and Colonial would be interested in selling at the highest price. I would expect that it would be to the interest of Miss Johnson or Colonial to sell to me at the highest price they could obtain. There was a provision in practically all the plans that if the sinking fund got above a certain amount we were to ask for tenders but not otherwise.

239 I do not remember any instances where the fund reached the amount requiring tenders because ordinarily we bought the bonds as fast as we could. I do not believe any of our annual statements, which were required in almost all instances, failed to contain a statement of the prices we were paying for bonds. It is possible that one or two did not contain this information. We sent out annual statements where the plan called for it. In a few instances I believe we did not but anyone who wrote in received the information. The statements set forth the bonds that had been retired during the year or the prices paid and prices we were offering at the time. There was no provision in the Postal plan for reporting to bondholders.

We did not have a good list of Postal bondholders, but we sent them two or three letters. We sent bondholders income statements but not balance sheets unless requested.

We always showed the amount of bonds outstanding but not the amount of the assets. In the case of Postal I do not think the letters sent to bondholders showed the income. They stated what had been done since the reorganization, the bonds retired, the price at which retired, perhaps the current price and an explanation as to the property and its prospects. There was a trust committee on Postal.

They received a complete statement every month. If any bondholders wrote in we would answer their inquiry.

I think in our communications to bondholders we stated that we were willing to buy the bonds at a certain price.

By "reports" to bondholders I mean communications that were sent out.

These reports were generally sent out annually. I think Quincy and one or two others were semi-annually. I think there were one or two others besides Postal to whom we did not send statements at all. At the present time, Mr. Kulp, Miss Johnson and I have office space together at 100 West Monroe Street. On the door we have "Paul E. Darrow and Associates".

This arrangement was formed following my resignation as trustee of Federal and National. There was no business enterprise that was formed. Kulp, Johnson and I are not partners nor are they in my employ. I am manager of certain properties and they are helping me in everything they can do.

This is not on a compensation basis. "Associates" on the door means that there are several of us in that office. I think they have one or two properties that they manage themselves.

240 We have the same telephone number I had as trustee of National and Federal and that stood in the name of Colonial.

SEC Exhibit 17 bears a photocopy of my signature.

Apparently, I sought approval of my action in dismissing the Quincy Station suits some thirty-five days after I had actually dismissed them.

(Mr. Roberson asked if it is admitted that the State Court loses jurisdiction over its decrees after thirty days. Mr. Smith stated: "I believe that is the law." Mr. Roberson asked Mr. Smith if he would agree that the State Court loses jurisdiction after thirty days. The Master

thereupon stated: "I don't think his agreement changes the law in any way or enhances it or minimizes it.")

I don't remember any discussion with my lawyer about dismissal of the suits except in our board meeting.

Before the sale in the Seligman case, I asked the Court's approval to buy the securities. I didn't know there was going to be any judicial sale, and I simply wanted authority if they were ever offered for sale.

If I consider anything of real consequence, I always asked the Court's permission but not if the thing was just a matter of routine business.

I know of no other instances where I made an important decision and carried out some action without the Court's approval but sought such approval afterwards. As far as I know, the only instance involved the Quincy Station dismissal.

241 Hearing before Special Master Archie H. Cohen
 February 25, 1946

PAUL E. DARROW

(Cross examination by Mr. Mayer)

I knew that the securities involved in the Seligman case were the securities in connection with the two top trusts and the subsidiaries. I knew what securities were involved in the Seligman case.

PAUL E. DARROW

(Cross examination by Mr. Mulfinger)

The money I gave Miss Johnson for securities in the Seligman case was given in several checks which, I assume, were drawn on the subsidiaries, the two top trusts and the Chairman Account.

(One of the checks used by Darrow in the Seligman case was marked Trustee's Exhibit No. 1 for identification as of February 25, 1946.)

This is one of a series of checks given for the purchase of bonds and securities in the Seligman case.

(Other checks used to purchase securities in the Seligman case were marked for identification as Trustee's Exhibit Nos. 1-A, 1-B, 1-C, 1-D, 1-E and 1-F.)

I believe those checks were used in a purchase of securities in the Seligman case. I think I made notations on the check stubs as to the items which the checks were supposed to purchase.

I believe Jacob Kulp & Co. went into bankruptcy while I was trustee. Jacob Kulp, the president, was then in my employ. I did not investigate that bankruptcy matter, nor as far as I remember did I request my attorney to do so.

I think I saw on some list that Jacob Kulp & Co. 242 had scheduled a claim against National in the sum of \$48,000.

I don't remember doing anything about this \$48,000 claim. There were entries in the ledgers of the various subsidiaries regarding claims involving Jacob Kulp & Co.

In some cases Jacob Kulp & Co. appeared as a creditor and in others as the debtor. I never investigated either the amounts nor the validity of the claims. I knew that Miss Johnson and Kulp had control of the books of the subsidiaries until Andresen appeared. I don't know whether the top trusts or the subsidiaries had claims against Jacob Kulp & Co. when it went into bankruptcy. I did not follow up that bankruptcy matter for I presume that my lawyer did.

Until this year I did not know that Michael Tauber & Co. had purchased the alleged claims listed by Jacob Kulp & Co. against the two top trusts and the various subsidiaries.

I heard about some payment which Tauber made for the assets of Jacob Kulp & Co., but I do not know whether it was \$1,500. I did not know for whom Tauber was acting in making the bid. I do know that afterwards I got a Court Order to buy the books of Jacob Kulp & Co. in which we were interested.

I never paid the alleged \$48,000 claim of Jacob Kulp & Co. I heard that this claim, which was purchased by Tauber in the Bankruptcy Court, finally came to the hands of Joe Baumann.

He is a relative of Kulp. I assume that the other claims against the subsidiary corporations were all turned over to Mr. Baumann.

While I was trustee of National and Federal, no claim was ever made by or in behalf of the owner of the claims scheduled in the Bankruptcy Court by Jacob Kulp & Co.

I never discussed that matter with Mr. Kulp, and I don't think that I ever discussed with him the refusal to pay the alleged \$48,000 claim against National.

243 When I learned about the \$48,000 claim having been disposed of to Baumann about a month after the sale, I did not examine into the affairs of National to see whether it was a valid claim. I believe I examined the books of National to see whether the claim was set up.

I did not make a report to the court that a relative of one of my employees purchased that (\$48,000) claim.

PAUL E. DARROW

(Cross examination by Mr. Mayer)

On Page 976 of the record I testified that Colonial was buying and selling securities of the subsidiaries and the top trusts and other securities.

I did not mean that Colonial dealt only with me because it also dealt with the general public.

PAUL E. DARROW

(Cross examination by Mr. Courshon)

When I learned of the Jacob Kulp & Co. bankruptcy proceeding, I did nothing that I remember of.

(The master stated that he would permit Mr. Darrow to clarify or explain discrepancies in his accounts appearing in his prior testimony under cross-examination by Mr. Mayer. Although requested by the witness to go over once more the matter of the discrepancies, Mr. Mayer stated that he preferred not to put the questions. However, the master requested Mr. Mayer to examine Darrow regarding the discrepancies in the interest of saving time.)

I can explain the discrepancies resulting from the fact that my final report in National shows receipts of \$161,137.26 and the detailed schedules show receipts of \$163,202.26. The difference is a bond profit or receipt in excess of the money expended for the same bond.

The difference of \$2,165 represents \$1,800 received from the sale of Ogden Park bonds; \$250 from the sale of Windsor bonds; \$15.00 for Austin bonds and \$100.00 for the Armour bonds.

244 The original reports were correct when filed. At a

meeting at the Securities and Exchange Commission, Mr. Roberson asked Mr. Marquiss to make a supplemental report and eliminate certain items, including said \$2,165.

The \$2,165 was the cash received in excess of the cash paid on the bonds mentioned. The amount of securities was reduced by that amount. We simply showed the excess of the sale price over the cost instead of showing the detail of the amount paid and the amount received.

I did not consider this an unusual method of bookkeeping. I had a competent bookkeeper to make the report to satisfy the Securities and Exchange Commission and the court.

Exhibit C of the final account in National shows disbursements of \$156,758.24 while Page 1 of the detailed schedule showed disbursements of \$158,823.24. This difference results from deleting the price paid for certain bonds and the prices for which they sold and leaving only the excess of the sale price over the cost. Exhibit B attached to the Federal final account shows receipts of \$168,662.16 while Page 1 of the detailed schedule shows receipts of \$166,448.14.

That difference of \$2,214.02 results from the elimination at the request of Mr. Roberson of bills receivable charged to National as its share of the expenses for the certain period. The \$2,214.02 consisted of the following: Trustee's salary account, \$554.11; office salaries, \$1,167.52; rent \$153.78; supplies \$86.23; telephone and telegraph, \$56.80; taxes, \$50.40; miscellaneous expense, \$7.95 and postage, \$37.23. This also explains the difference between \$121,910.15 shown as operating expenses and Exhibit B of the final account and \$119,696.13 shown as operating expenses on Page 1 of the detailed schedules. Exhibit C of the final account in National shows \$47,469.25 was expended to purchase bonds while Page 1 of the Detailed schedules shows \$49,534.24 for that purpose.

That difference of \$2,065 has already been explained when I said that we simply showed the profit instead of the details of the transactions.

245 We deleted the profit in both instances. The so-called profit was \$2,065. We reduced the cost of the bonds by \$2,065 and reduced the receipts by \$2,065. It did not make any difference as far as profit is concerned. We did not take any profit out or put any profit in.

Previously, I talked about the difference being \$2,165 and \$2,065. In the final report, \$100.00 is the sale of an Armour bond in excess of the cost and was credited in error to the interest received. In the supplemental report the interest was reduced \$100.00 and that \$100.00 was credited as a profit on the bonds.

Schedule 2-L of the detailed schedules in Federal shows a total interest of \$980.00 while an addition of the figures shows a total of \$1,080. This resulted in an error from typing. The St. Louis bonds did not pay interest on February 1, 1943, in the amount of \$100.00 and there was an error in carrying over that amount. Thus, \$980.00 is correct.

There is a difference of \$20,600 between the bonds which I apparently should show as having on hand in the final account and the bonds actually shown as on hand in the third page of Exhibit B of each final report regarding the Chairman Account. In making distribution in the Chairman Account, we gave cash or bonds to the companies that had money coming. We gave Irving Park \$2,000 on the 2nd mortgage bonds as its share of the distribution, figuring the value of \$222.19; we gave Park View \$8,100 of first mortgage bonds, valued at \$203.61; we gave U. S. \$10,500 of second mortgage bonds, valued at \$206.69.

That meant that \$20,600 in bonds were given to the corporations and the bonds turned over to Mosser were reduced by that amount.

I had quite a bit of confidence in all the people in my office or they would not have stayed. On Page 807 of the transcript, questions were asked about bonds numbered in the cases of exchanges. Mr. Marquiss thinks that where several bonds are tied together in Schedule 2-1 an exchange of bonds is indicated. In showing the profit or loss, I think we took the cost of a bond purchased and then took the sale price of a substitute bond. When the bonds were exchanged. It was simply done as an accommodation without profit or loss. We frequently exchanged bonds as an accommodation to the owners.

246 In one case an estate held \$1,000 bond. I gave them ten \$100 bonds in exchange so that they could make distribution. I did not make a record of the number of the bonds because I considered numbers of no consequence. I was interested only in having a right total.

Further, it was better for us to have bonds of larger denomination and cancel bonds of lower denomination. This saved expense (in making interest payments).

Aside from a transaction in which I received from Miss Johnson bonds of a larger maturity pending her ability to deliver bonds of an earlier issue, I never exchanged bonds with Colonial, Miss Johnson, Jacob Kulp & Co. or anyone else where I gave bonds of an earlier maturity for bonds of a latter maturity in the same issue.

I want to correct my previous statement (page 1089) and state that I have complete confidence not "quite a bit of confidence" in my employees.

247 Hearing before Special Master Archie H. Cohen
March 20, 1946

PAUL E. DARROW

Cross Examination by Mr. Roberson.

When I stated at Page 1079 of the record that Mr. Roberson asked that an account receivable of Federal be eliminated and distributed to the expense account, I didn't mean to imply that I was present at the discussion. Mr. Marquiss told me what was said.

As to anything that I stated took place at that time, I don't mean that I knew it of my own knowledge. I was told what took place, I was not present at the meeting.

I think I stated that the discrepancy of \$2,065 (see Page 1081) arose through the elimination of the cost and purchase price of certain bonds and the inclusion of a profit. However, Marquiss could answer the question better than I can.

(Mr. Herriott stated that if you eliminated both the sales and cost price it still would not correct the account. That he was a little uncertain as to what the explanation was and that he understood Marquiss would come in and explain what had happened.)

PAUL E. DARROW

Cross Examination by Mr. Mulfinger.

In the Jacob Kulp & Company bankruptcy filed in 1936, Burke Williamson represented me and I conferred with him more than twenty times about the matter. I had for-

gotten it until I checked up afterwards. I learned part of the assets consisted of numerous claims against the subsidiaries.

I presented a petition to the court which appointed me for leave to purchase some of the assets.

I filed a petition to purchase some of the books and records. The reason I merely asked leave to purchase the books and records and not the assets was because as far as I knew these were the only things of value to the trusts in Jacob Kulp & Company. We couldn't have operated without the books and records. I didn't know that the claims that Jacob Kulp & Company allegedly had against the subsidiaries would affect the subsidiaries because at that time the claims were considered worthless.

248 I don't know whether or not they were valid claims.

My attorney presumably looked that up. I participated in the reorganization of the subsidiaries and I permitted the claims of Jacob Kulp & Company to be set up as valid claims. I presume I then knew that those claims would come ahead of the stock which I, as trustee, owned, but my attorney was handling the whole business. Whether the equity would be of any value in the future nobody knew. I was not interested in who was purchasing these claims.

As far as I know, no objection was made to any of these claims, unless my attorney objected.

I had no personal dealings or written communications with Michael Tauber & Company in connection with the purchase of these books and records. I don't know to whom I delivered the checks for the purchase of the books and records.

I don't find the place in my accounts where these payments are set forth, but Mr. Marquiss could probably tell you.

MYRTLE JOHNSON

(Cross examination by Mr. Mayer)

At Page 468 and at Page 286, there appears a statement as to the contents of Lot 2. In both places the records state that Lot 2 contained \$286,100 in Federal bonds. At Page 468, the records shows 62,358 shares of Federal and at Page 286 the records show shares of Federal in the amount of \$623,580. At Page 468, the records shows

10,761 and 3/5ths shares of National and at Page 286 the record states that the shares of National were in the amount of \$269,040. The shares are correctly stated in each case because the declared value of Federal shares is \$10.00 and the par value of the National shares is \$25.00.

(A statement of the securities from Lot 1 in the Seligman matter delivered to Darrow was marked S.E.C. Exhibit No. 21 for id.)

The contents of said exhibit are all enumerated in detail at Pages 413-415 of the record.

(S.E.C. Exhibit No. 21 was received in evidence.)

The checks in the total amount of \$12,447.55 employed for payment of these securities were made payable to Colonial.

249 From 1935 through 1943, during Darrow's trusteeship, I was an officer of Colonial holding the position of secretary.

Jacob Kulp was President during all of that time. Lee H. Kulp was treasurer part of the time and during the balance Jacob Kulp was treasurer.

Hillman L. Robinson and Harry A. Hirst were vice-presidents. That is all the officers. I can't remember whether all these parties, aside from Lee Kulp, were in office during the entire time Darrow was trustee, but Jacob Kulp and I were officers during the entire time. I can't say how long Lee Kulp was an officer. He was out of our office from 1933 on and was not active after he left.

MYRTLE JOHNSON

(Further examination by Mr. Mulfinger)

Robinson and Hirst were officers and were active as salesmen. Although, Jacob Kulp was president of Colonial, I would say that I actively directed the operations of the company more than he did.

250 Hearing before Special Master Archie H. Cohen
April 5, 1946

PAUL E. DARROW

(Cross examination by Mr. Mulfinger)

I paid \$750 to Jacob Kulp due Michael Tauber & Company for what I received as trustee of the two trusts from

the assets of Jacob Kulp & Co. bankruptcy. That is the amount we paid for the books, records and coupons.

Of that \$750, Federal paid two-thirds and National one-third.

Federal paid \$500 and National \$250. I was told that this morning by Attorney Burke Williamson.

I don't know whether I received a bill of sale from Tauber. Mr. Williamson obtained the court order and told me to make out the checks and I did so.

I don't remember to whom I gave the checks. They must have been mailed or delivered. I received nothing in return for the checks, as we already had the books and coupons in the office all the time. I received no evidence of ownership that I know of. Very probably Miss Johnson knew more about the mechanics of the transactions than I did.

MYRTLE JOHNSON

(Cross examination by Mr. Mulfinger)

I knew the sale was to be held in the bankruptcy of Jacob Kulp & Company, and I believe I discussed it with Mr. Darrow.

I also discussed it with Mr. Lowenthal, the attorney. I may have discussed it with Mr. Williamson, and I believe I spoke to Mr. Goldman about it. I had no personal contact with Tauber at that time. I believe Lowenthal handled the matter for me. He represented the bankruptcy of Jacob Kulp & Co.

Shortly after the sale some of the assets came into my possession. That was about November 5th or 6th, 1936.

I paid \$800 by check for said assets.

251 I used my personal check drawn on the Continental National Bank. I received delivery of certain securities and an assignment covering the accounts. I believe the \$800 check was handed to Lowenthal, and I think he delivered the securities to me.

I don't remember whether I received a bill of sale. In the Federal group, the accounts receivable totalled approximately one hundred thousand dollars, and in the National group \$61,000. That includes the trusts themselves and the subsidiaries.

Among the accounts receivable that I purchased was a claim against Crandon Shore Building Corporation. I am not sure that \$9,024.19 was the exact figure, but it is substantially correct because it is close to the figure in the report of Scovell, Wellington and Company which was prepared as of May 31, 1935. Said report deals with the financial condition of Federal, National and the subsidiaries.

Among the accounts receivable purchased from Tauber was a claim against Postal in the sum of \$30,529.68. I participated in the reorganization of Postal. Said receivable was set up as a valid claim against Postal in the Plan of Reorganization. In the reorganization proceeding, it appears that the receivable was "due Jacob Kulp & Co. as of June 17th, 1935". I had purchased that claim in 1936.

The Plan of Reorganization was dated December 31, 1937. I know of no reason for setting up that the receivable was due Jacob Kulp & Co. other than that it was on the books of Postal. Another receivable purchased was against Los Angeles in the amount of \$2,175.04. I also participated in that case. That claim was set up as a valid claim against Los Angeles.

One of the receivables was a claim against McKinley Park in the sum of \$6,658.09. That claim was allowed in the sum of \$6,204.05, and is set up in the reorganization as due Jacob Kulp & Co. as of May 31 (1935).

I participated in the reorganization of McKinley Park. (Mr. Herriott stated: "Going back to Postal. That receivable is shown in the plan as due Jacob Kulp & Co. as of June 17, 1935.")

252 The plan for Postal was approved December 31, 1937. There was no reason that I know of for leaving out the name of the owner of the account. I participated in the reorganization. The claim was allowed to remain as it was with no interest and no payment could be made on it until all bonds were retired. I have received nothing of value upon said claim.

The figures were prepared for the reorganization by Marquiss, and I relied on his statements. I did not furnish all the data. The attorneys came to the office for conferences and I participated therein. There was a receivable due from Berwyn Post Office in the amount of \$3,141.67 which we purchased from Tauber.

In the plan of Berwyn there appears the claim to Jacob Kulp & Co. in the sum of \$2,995. It does not refer to a date, but that is the amount given in the schedules of May 31, 1935 of Scovell, Wellington. I also participated in the plan of Berwyn.

The claim against Crandon Shore heretofore mentioned was not included in any plan of reorganization because in that case there was a straight foreclosure and the claim was wiped out.

One of the claims of Jacob Kulp & Co. was against Ferry Station for \$34,864.21 and that was allowed in the reorganization. One of the accounts which I purchased from Tauber was a claim against Grand Rapids for \$3,463.87 and that claim was allowed in the reorganization.

There was a reorganization of Irving Park, and I participated therein. One of the claims I purchased from Tauber was against Irving Park. If the amount shown in the plan was \$4,472.86, that is correct. The amount shown by Scovell, Wellington varies a little from that figure.

They show \$4,060.27, but there is a difference in dates. The claim was allowed against Irving Park. I am not sure that I purchased the claim of \$1,507.11 against Park View from Tauber & Co. I do not find anything about such a claim in the Scovell Wellington report.

253 North Halsted was reorganized by Darrow and me without court procedure. We extended the bonds and reduced the interest rate without disturbing any claims. If the statement of Jacob Kulp & Co. shows a claim against North Halsted for \$3,856.45, I purchased that claim from Tauber & Co.

I also purchased a claim against National in the sum of \$48,373.39. Chicago Merchandise Certificates was a company that Kulp and I were working on during the World's Fair. It issued merchandise certificates and sold them to the stores.

It was a sort of premium like trading stamps. One of the claims which I purchased from Tauber was a claim against this company for \$5,888.76. As I recall it, no individual claims were filed against these corporations. However, the attorneys handled the reorganization details. Furthermore, the claims which I purchased from Tauber were not in my possession at the time the plans were worked out.

I think there was a blanket claim filed on the obligation of the companies. A very short time after I received the accounts receivable from Tauber, I delivered them to Joseph Baumann, a step-son-in-law of Jacob Kulp. Baumann paid me the amounts still due me over and above the sum I had received for which I sold certain of the assets.

I didn't make out a bill of sale. I merely turned over the accounts receivable which were in blank. He paid me approximately \$400 in cash in Chicago. I turned over all the accounts receivable to Baumann and kept the other assets of Jacob Kulp & Co. received from Tauber. I do not now have those assets.

I sold all of them. They included a first mortgage bond of Park View in the face amount of \$100. I soon sold it either to National or the Chairman Account, and I think the price was \$25.00. There were also three first mortgage bonds of Windsor Shore totalling \$1,500. I sold them either to the issuer, National or the Chairman Account at a price of 20.

254 I realized \$300 on the transaction. Among the assets

I purchased were coupons of Federal in the amount of \$474.50. I turned them all over to Darrow. These were coupons that were past due and have been paid by Kulp & Co. There was also a United States Parcel Post first mortgage bond of \$100.00 among the assets. Shortly after the purchase, I sold it to the issuer, Federal or the Chairman Account for \$25.00.

Among the assets I also received 40 shares of Prince and Whitely Trading Corporation common stock dated May 15, 1930. It was worthless. I also received 26 shares of Missouri-Kansas Pipe Line common stock, which I still retain. I keep no books other than my check book.

The 2,200 shares of Railroad Shares Corporation common stock, which I received from Tauber at that time, had no value; and I think I still have them. I don't recall anything else of value which I obtained from Tauber and which had formed part of the assets of Kulp & Co. In making the purchase from Tauber, I was acting for Mr. Baumann on the accounts receivable by previous arrangements.

Baumann, Kulp and I had some discussion about the matter prior to the sale. Prior to the sale, it had not been determined what assets I was to receive and what assets Darrow was to receive out of the Kulp & Co. assets. I

made the purchase from Tauber about November 6, 1936. The sale took place on October 31, 1936. As I recall, Lowenthal, now deceased, made the arrangements with Tauber for the sale of the assets to me.

Melvin Goldman, who was probably not out of school at the time, had nothing to do with the arrangements. I don't recall that he delivered the securities to me. Mr. Lowenthal made the arrangements.

MYRTLE JOHNSON

(Examination by the Master)

With regard to all of the accounts receivable that I obtained through Michael Tauber & Co., I did not notify any of the companies obligated to the bankrupt that the accounts had been assigned or delivered to me and that I was the owner.

255 So far as I know, Mr. Baumann did not notify them either.

MYRTLE JOHNSON

(Cross examination by Mr. Roberson)

Prior to the purchase of the assets, I think I had conversations with Darrow with reference to all the matters concerning Jacob Kulp & Co., including the purchase of the assets. There were a number of discussions about the coupons, books and records.

The history of the 27 companies and the two trusts were embodied in the books and records of Jacob Kulp & Co. Thus, it was important that Darrow have the books and records. I had conversations with Darrow pertaining to Kulp & Co., from the time of his appointment in May of 1935. Kulp & Co. went into bankruptcy in 1936. The fact that the sale would take place on October 31, 1936, was public information; but I had no discussion with Tauber prior to October 31, 1936, about the sale. Neither did Darrow—to my knowledge.

Mr. Lowenthal discussed the matter with Tauber.

Prior to the sale of October 31, 1936, I had Leo B. Lowenthal discuss the matter with Tauber on my behalf. This had nothing whatever to do with Darrow. I did not want any of the accounts, coupons or other assets to come into

strange hands. There were approximately \$91,000 in coupons among the Kulp assets. That would make trouble in the reorganization if they were in the hands of the public. The accounts receivable were of questionable value, but I did not want them in the hands of strangers. The other items were inconsequential. The important things were the books, records and coupons.

I told Lowenthal that I and the party I was acting for greatly desired to be successful bidders in the sale. I gave him the figure of \$1,500 with an authority to increase it to \$10,000 if there were outside bidders. I was not at the public sale.

I assumed that Tauber bid in these assets, acting on my instructions to Lowenthal. Arrangements for compensation were not made to my knowledge. In fact, I do not know what Tauber paid for the assets. I may have known at the time that they paid \$1,500, but I don't remember it now.

256 Lowenthal filed the voluntary bankrupt petition for Kulp & Co. After the assets had been acquired by Tauber, Darrow obtained the court's permission to pay a certain amount for the books, records and coupons. He filed his petition after I had arranged with him that he could participate in this transaction to that extent.

Although Tauber did not as yet have possession, he was the nominal owner of all the assets, including the accounts receivable and books and records under a bill of sale from Maurice Klein, the Trustee, and he held them for my benefit.

(In answer to the question whether the witness sold the books and records to Darrow after he received court authority or directed Tauber & Co. to make the transfer, she said—I can't remember the details.)

I know I made out my check for \$800 and Darrow made two checks. The three checks were made to Michael Tauber & Co. As I recall, Darrow delivered the checks to me, and I gave them to Lowenthal with my check. There were three checks and Mr. Darrow went in it with me.

The three checks were all delivered by Lowenthal at one time. Lowenthal did not obtain the accounts receivable, coupons, books and records and deliver them partly to me and partly to Darrow. When Klein was appointed receiver, we arranged with him for the books and records

to remain in the office of Kulp & Co. so that the subsidiaries could function. Consequently, it was not necessary to make delivery. That did not apply to the securities and other assets delivered to Tauber.

The only assets left in the possession of Kulp & Co. were the books, records and certain coupons. The face amount of the coupons was approximately \$91,000. They were secured by first mortgage and second mortgage trust deeds of the various subsidiaries.

Whatever is in the bill of sale from Maurice Klein to Michael Tauber & Co. other than the coupons, books and records constitute the assets that I purchased for the \$800. Prior to the time I made the purchase of these securities, the arrangements were that I was to purchase them and deliver them to Baumann. I bought them with my own money and made out my own check. Prior to purchasing them, I had not received an advance from anyone.

257 As I previously testified in regard to the securities of Park View and United States Parcel Post Building, I disposed of them for a total of \$350. I do not believe that there was anything else that had any value except the stock that I referred to and that is valuable now. I had the understanding with Baumann and Kulp that I would liquidate the items that were easily converted into cash and would be paid the difference between the amount so realized and the \$800 I advanced. Since I realized \$350, I received the balance of \$450, which was thus due me.

This was paid to me in Chicago by Baumann and at that time I delivered the assignments of the accounts receivable. Mr. Goldman, the attorney, filed a claim in the Kulp & Co. bankruptcy on behalf of Baumann.

The claim was based on a note which was originally \$90,000. The claim was for the balance of \$50,000 plus accrued interest from the date of execution in 1929. The claim included an account due Mrs. Baumann for securities delivered to Kulp about 1929 which had a market value of \$75,000 to \$80,000. That was a transaction between Baumann and Kulp & Co. It had nothing directly to do with the accounts receivable. The said loan from Baumann as well as the proceeds of the securities received from Mrs. Baumann were all used in connection with the operation of Kulp & Co. which was primarily concerned in the operation of these properties.

Jacob Kulp personally endorsed the loan from Baumann. Baumann's claim was originally secured by some stock of 22nd Street Building Corporation, the United States Building Corporation and a number of others. Kulp obtained Baumann's permission to substitute for the foregoing 10,000 shares of National Realty stock which Baumann still holds.

I have known Baumann thirty-three years. His address in New York is in care of Baumann Bros.

He is a partner in the corporation engaged in the retail furniture business. Baumann usually came to Chicago twice a year for the furniture show. He knew that I was associated with Darrow but didn't know whether I was employed. (When the witness stated she thought Baumann knew Darrow was trustee of National and Federal, the court sustained the objection to the question.) I discussed with Baumann the entire situation relating to the assets of the two trusts.

258 The first time we discussed the matter was when he received the collateral for the loans in 1929. Baumann or his daughter is holding the underlying securities.

The last time I discussed the matter of the trust with Baumann was in 1936 when he was here for Mrs. Kulp's funeral. He did not make trips to Chicago between 1929 and 1936 because business was quiet, and he made few trips from the time of Darrow's appointment in 1935. Baumann was never in our office but he met Mr. Darrow, I believe, in New York.

I never told Baumann what work I was doing for Darrow, as trustee. I don't believe I ever discussed with him my relationship with Darrow. He had the general knowledge of the type of work I was doing, having known me for many years and having purchased securities on the properties we financed. I don't think he met Darrow by reason of Kulp's or my association with Darrow.

I previously mentioned that when we were arranging for the assets through Tauber of Kulp & Co. there were conversations between Kulp, Baumann and myself. Darrow was not present at any of the conversations. I discussed the matter with Baumann on the long-distance telephone. He did not come to Chicago to make arrangements for the purchase. Later, when he came to Chicago for another purpose, I delivered the securities to him.

Within a few months after the purchase, I delivered the accounts receivable to Baumann and received the \$450.

This took place in Kulp's home in Chicago. Baumann never came to our office, as far as I can recall. Over the period since 1935, I have talked to Baumann probably twenty or thirty times.

I don't believe that I discussed with him the type of work I was then engaged in doing for Darrow. I didn't tell him what position Darrow occupied and no one else told him, to my knowledge. In my correspondence with Baumann, I probably used my own stationery and in some cases that of Colonial Securities. I never corresponded on the letterhead of Federal or National because I would not be writing on behalf of the trusts. I would be writing on behalf of Colonial, Kulp or myself.

259 Baumann had business dealings with Colonial and had bought a number of bonds from Colonial. He addressed his letters to me at the office of Colonial. I never informed Baumann of Kulp's or my arrangement with Darrow, as trustee.

I told him National and Federal were in reorganization, but I do not believe I told him who the trustee was. Kulp made the arrangements with Baumann relating to Colonial and the interest Baumann had in National.

Thus, there would be conversations between Kulp and Baumann at which I was not present. I did not make any profit out of the purchase of these securities through Tauber nor did Kulp make any profit on them, nor did Baumann make any profit. All that Baumann paid for the receivables was \$450.

MYRTLE JOHNSON

(Further Examination by Mr. Mulfinger)

Among the assets which I received from Tauber were some worthless first mortgage gold bonds of Kraus Bros. Lowey Company. I knew that they had been appraised in the bankruptcy proceedings at \$625.

As I previously said, my primary motive was to see that these securities did not get into unfriendly hands. I wanted to keep the coupons especially out of unfriendly hands. I had in mind that Baumann should hold the accounts receivable as additional collateral for the indebt-

edness owed him. I think I was protecting the interest of the subsidiaries because somebody might try to collect these accounts.

This would make quite a bit of trouble in the reorganization. While in his hands they would be allowed to lie dormant.

MYRTLE JOHNSON

(Further examination by Mr. Roberson)

I did not discuss with Darrow the advisability of his purchasing the accounts and holding them.

260 MYRTLE JOHNSON

(Further examination by Mr. Courshon)

I testified that I wanted the accounts in the hands of Baumann as additional collateral to the 10,000 shares of National he already held. Jacob Kulp, individually, had delivered to him the National shares. If Kulp paid Baumann the money he owed, then all this collateral would come back to Kulp. These claims were allowed in the reorganization of the various subsidiaries. They were to be paid after the first mortgage bond issues had been retired.

I arranged with Baumann and Kulp to purchase the accounts receivable on behalf of Baumann through Tauber and Company. I had not discussed that with Darrow at that time.

I made the arrangements with Mr. Lowenthal on behalf of Baumann who was to put up any additional funds that were necessary. It was not necessary for me to receive \$1,500 from Baumann because I discussed with Darrow the necessity of our having the books and coupons and he agreed to pay \$750 for them.

He secured a court order to pay \$750. I had him issue checks for that amount, and I issued a check for the balance. I do not know what amount Tauber paid the trustees—\$1,500 or some other amount. Darrow's two checks were for \$750.

I do not know whether any commission was paid to Tauber. I paid them \$1,550, and I do not know what they paid. I paid them no bonus.

I just paid \$1,550. I did not act in respect to the assets of Kulp & Co. on my behalf.

MYRTLE JOHNSON

(Cross examination by Mr. Herriott)

This was a public sale in the Bankruptcy Court with open bidding. I sent word to Tauber to bid up to \$10,000 for the assets they purchased. If any other bids, they would have to go over \$10,000. After the purchase by Tauber on my behalf acting for Baumann, I discussed with Darrow the purchase of the books, records and coupons. Our arriving at the figure of what he should pay was "more or less shooting at a figure in the sky". The coupons amounted to approximately \$91,000. They were issued in connection with the first and second mortgages of the underlying companies. Although the books and records as such would have no intrinsic value that would be 261 necessary adjunct of the business for operating the trusts.

After we had arrived at the figure to be paid for the coupons, books and records, Darrow's attorney obtained the court order to pay that amount. My understanding with Baumann was that he was to get Darrow any of the assets of the public sale that I thought he should have in order to protect the two trusts. Baumann was interested only in obtaining the accounts receivable, which themselves were worthless, as far as collectibility was concerned.

However, when he had them, he would prevent any outsider from proceeding on the claims and obtaining a position better than Baumann had in the trusts. Baumann cooperated in working out the plans of the companies in which he owned securities. During the pendency of the Kulp & Co. bankruptcy, Darrow filed a petition asking that the claims shown by the schedules in favor of the subsidiaries against Jacob Kulp & Co. be considered as offset against the securities of the trusts and subsidiaries owned by Kulp & Co. The accounts receivable purchased by Tauber for the benefit of Baumann might to some person have a fair value at the time they were sold to Tauber of as much as \$10,000.

I have known lawyers anxious to obtain claims in reorganization cases in order to file them and receive fees. However, any such lawyer or any other person, including the trustees of these trusts, would have to bid over \$10,000 to purchase them.

These coupons Darrow acquired for \$750 were held by him at the time of the reorganization and then cancelled out.

As trustee, Darrow obtained this benefit from the coupons: They were not in adverse hands and no consideration had to be given them. "They were cancelled, and the owners of the bonds with coupons of the same serials received no consideration of any kind for their coupons, and the persons that cashed them with Jacob Kulp and Company were preferred." In arriving at the amount paid by Darrow, I took into consideration the amount I had paid Tauber. The price to Darrow would have gone up correspondingly with the amount Tauber had to bid.

262 MYRTLE JOHNSON

(Further examination by Mr. Mulfinger)

I knew that some of these coupons were delivered to Darrow by order of the Referee for cancellation.

I think the reorganizations were not completed at the time of this purchase by Tauber & Company. (Mr. Herriott stated that he understood these coupons were paid to the holders by Kulp & Co. on behalf of the trusts. Mr. Courshon added that payment was made out of the money which Mr. Kulp collected as rent for the companies.

The twenty-seven subsidiaries and the two trusts were not the only sources of income of Jacob Kulp & Co. There were other companies. Mr. Kulp was the operating agent of these properties. At the time these coupons were purchased, Jacob Kulp & Co. owed money to the various companies at the time they were reorganized. This money due the companies by Kulp & Co. was wiped out by the reorganization proceedings. I do not know whether or not Darrow withdrew the intervening petition he filed on behalf of the various trusts.

MYRTLE JOHNSON

(Further examination by Mr. Roberson)

These coupons delivered to Darrow were payable to the office of Jacob Kulp & Co. They had previously matured and have been presented by the owners of the office of Kulp & Co. where payment was made.

In some instances they were coupons for which funds were not deposited. At the time these coupons were paid, the companies did not have funds with which to pay them. Kulp & Co. picked them up and carried them on the books as not cancelled. Kulp & Co. advanced the funds on behalf of the subsidiaries. These coupons had been issued by companies that did not have credit balances with Jacob Kulp & Co. The issuers of the \$91,000 of coupons were not creditors of Jacob Kulp & Co. on open account.

263 I believe South Side Post Office had a credit of \$125.25 on its coupons; Irving Park had \$16.25; Station "D" had \$1.25 and the others were all companies who were not creditors of Jacob Kulp & Co. These coupons were paid by Kulp & Co. The latter showed on the books a debit item of the amounts of these coupons.

At that time Kulp & Co. were acting as manager of the properties of the subsidiaries not as payer of the coupons.

Kulp & Co. was not expected to pay the coupons if it did not have the funds.

MYRTLE JOHNSON

(Further examination by Mr. Courshon)

If the schedules show that at the institution of the Bankruptcy Proceedings Jacob Kulp & Co. was indebted to Federal in the sum of \$3,006.25; and that Kulp & Co. was indebted to Chicago Post Office Building in the sum of \$88,221.47, that is the fact.

If the schedules show, it is true that Kulp & Co. was indebted to Columbus in the sum of \$32,641.88; to Station "D" for \$4,196.72; Dallas for \$40,256.80; Ferry Station for \$26.25; Irving Park for \$72.50; McKinley for \$178.75; North Halsted for \$26.25.

Quincy Station for \$172,224.75; Roseland Building Corporation for \$3,012.85; South Side Post Office, \$10,146.53; Twenty-Second Street Station, \$37,449.52; United States Building Corporation, \$22,858.74; Villa Building, \$6,554.55; Austin Station, \$24,270.84; Berwyn Post Office, \$80.00; 6748 Crandon Avenue Building, \$340.50; Division and LaVergne Building, \$7,623.77; Postal Facilities, \$16.25; Grand Rapids Parcel Post, \$20.00.

LaGrange Post Office, \$20.00; United States Service Station, \$251.00; Ogden Park, \$6,461.95; Park View Manor, \$6,885.60; 6929 North Clark Street, \$12,705.23; Windsor Shore, \$4,581.67.

Paul E. Darrow as trustee of National and Federal, \$1,428.55. I do not know whether the figures are correct without checking the books.

I cannot say that each of the corporations had an item due from Kulp & Co. unless I checked the records.

264 The following is a break-down of the \$91,000 in coupons paid by Kulp & Co. as shown by the lists of Scovell, Wellington.

Federal Facilities Realty Trust, \$474.50; Station "D" Post Office Building Corporation, \$1.25; Irving Park Post Office Building Corporation, \$16.25; Roseland Building Corporation, \$244.10; South Side Post Office Service Building, \$105.25; Villa Building Corporation, \$16.25; Austin Station Building Corporation First Mortgage, \$12,736; Austin Station Building Corporation Second Mortgage, \$5,192.50.

Crandon Shore Building Corporation, \$2,600.75; Postal Facilities, Incorporated Second Mortgage, \$10,653.50; Grand Rapids Parcel Post Building Corporation, \$1,202.50; Ogden Park Post Office Building Corporation, \$6,369; Park View Manor Building Corporation, First Mortgage, \$14,035.89; Park View Manor Building Corporation, Second Mortgage, \$22,098; Rogers Park Post Office Building Corporation, \$10,114.53; Windsor Park Station Building Corporation, First Mortgage, \$2,977.25.

Those figures total \$91,392.52.

These were the same coupons that Darrow received out of the assets of Kulp & Co., but he included the \$474.50 (due to Federal) that Mulfinger asked about. The figures Courshon just read off are the amounts due Jacob Kulp & Co. from the various corporations as of the date of filing of the Kulp bankruptcy petition. These coupons were all paid by Kulp & Co. prior to their going into bankruptcy at varying dates.

The figures mentioned by Courshon show the amounts due to Kulp & Co. on open account as of the date of the Petition in Bankruptcy but do not reflect the status of the accounts between the bankrupt and the subsidiary corporations as of the date the coupons were paid. The figures do reflect the conditions of the accounts when the accounts were sold in October of 1936.

265 Hearing before Special Master Archie H. Cohen
April 10, 1946

CLAIRE M. MARQUISS

(Examination by Mr. Roberson)

I was in the employ of Darrow during 1935 and 1936. I recall that he signed two checks for the purchase of certain assets of Kulp & Co. As trustee of Federal, he executed one check for \$250.

As trustee of National, he signed another check for \$500. The checks were payable to Michael Tauber & Co.

There was no physical change in the location of the books and bondholders records after the purchase was made. They remained exactly where they were previous to the purchase from Michael Tauber & Company. The records were of considerable value in tracing back transactions, sort of checking back on the analyses of building costs and many other things in connection with bookkeeping and accounting work, where statements of one kind or another were required.

We resorted to those books from time to time. To my knowledge there were no securities purchased by Darrow in addition to the books and records.

I think these checks were made out or delivered on November 4, 1936. I don't recall what was in the account of National and the account of Federal on that date, but there was money in each account. However, I do know that on October 31, 1936, the Federal balance was \$6,134.27, the National balance was \$361.18 and the Chairman Account \$6,802.98.

The Federal bank account was with the Northern Trust Company and the other two with the Continental-Illinois National Bank and Trust Company.

EDWARD J. TURNEY

(Direct examination by Mr. Roberson)

266 For twenty-five years I have been employed by Michael Tauber & Co., 411 South Market Street, Chicago, Illinois. I am secretary-treasurer. We have records concerning the Jacob Kulp & Co. bankruptcy sale on October 30, 1936.

Our records show that we have acquired various securities and accounts receivable in the U. S. District Court on October 30, 1936, for \$1,500, and that we disposed of them

on November 5, 1936 to two parties, Paul Darrow, as trustee, and Myrtle Johnson. I did not attend the sale and my testimony is simply from the records.

(Bill of Sale from Maurice Klein, trustee, to Michael Tauber & Co., for \$1,500 was marked Trustee's Exhibit No. 1 of April 10, 1946.)

(Mr. Herriott stated that Miss Johnson established that the books and records of Kulp & Co. were acquired by Tauber through this purchase and subsequently assigned to Darrow. This bill of sale says nothing about books and records.)

(Trustee's Exhibit No. 1 was received in evidence for identification.)

When this bill of sale was received from Maurice Klein, I don't know whether anything was attached to it.

(A copy of the Bill of Sale from Michael Tauber & Co. to Darrow was marked Trustee's Exhibit No. 2 of April 10, 1946; and a copy of attached sheet enumerating items covered by the Bill of Sale was marked Trustee's Exhibit No. 2-A of April 10, 1946.)

(A copy of the Bill of sale, as shown by the records of Michael Tauber & Co. from Michael Tauber & Co. to Myrtle Johnson was marked Trustee's Exhibit No. 3 of April 10, 1946. A copy of a sheet marked Exhibit A, attached to said Exhibit 3, containing a part of the items covered by Exhibit 3 was marked Trustee's Exhibit No. 3-A of April 10, 1946. A copy of a sheet marked Exhibit A attached to said Exhibit 3 listing the accounts receivable in bonds passing under said Trustee's Exhibit 3 was marked Trustee's Exhibit No. 3-B of April 10, 1946. A copy of a sheet listing certain of the securities under Trustee's Exhibit 3 was marked Trustee's Exhibit No. 3-C of April 10, 1946.)

267 (Mr. Herriott stated that he did stipulate to the admission of Trustee's Exhibits 1, 2 and 3 of this date, subject to verification. He added that he had no objection to them, subject to finding something different when the originals were obtained. However, he said that he would not let them go in with the signature, which in no way are connected with Darrow or Johnson (referring to the signature of Melvin Goldman by way of receipt for Trustee's Exhibits No. 2-A, 3-B, 3-A and 3-C.)

(Trustee's Exhibit No. 1, 2 and 3 of April 10, 1946, were

received in evidence, subject to the objection regarding the signature of Melvin Goldman and the qualification regarding verification.)

EDWARD J. TURNEY

(Cross examination by Mr. Herriott)

I have no personal knowledge of who signed any part of the exhibits attached to the exhibits which have just been received in evidence.

All I know about the transactions is what I found in the records; our case records show that we received \$1,550.

My company paid \$1,500 to the bankruptcy trustee and sold what it then purchased to Miss Johnson and Mr. Darrow for \$1,550.

We paid \$1,500 for the assets. The entry of the \$1,550 was made in our cash book on November 6, 1936.

(A check from Myrtle Johnson to Michael Tauber & Co., in the amount of \$800 was marked Trustee's Exhibit 4 of April 10, 1946 and was received in evidence.)

MYRTLE JOHNSON

(Examination by Mr. Roberson)

Trustee's Exhibit No. 4 is the certified check on the Continental-Illinois National Bank and Trust Company dated November 5, 1936, which I delivered to Mr. Lowenthal uncertified for the assets of Kulp & Co. That check was in payment for the securities described in Trustee's Exhibits No. 3, 3-A, 3-B and 3-C.

268. A claim in the amount of \$4,275.36 was allowed Jacob Kulp & Co. in reorganization of Irving Park.

The plan of reorganization had this provision:

"All unsecured claims against the debtor existing at the date of the approval of the petition herein, on May 25, 1935, shall be suspended and no action for the enforcement of the same shall be taken until June 15, 1950, and no interest shall accrue on such claims during said period. No statute of limitation shall run against said unsecured claims during aforementioned period."

MYRTLE JOHNSON

(Cross examination by Mr. Herriott)

Said plan under the heading "Article 3. Capitalization and Indebtedness of the Debtor as of May 25, 1935" includes this item: "Due Jacob Kulp & Company, Inc., \$4,375.36."

The plan was filed jointly by the debtor and a bondholder's committee.

MYRTLE JOHNSON

(Redirect examination by Mr. Roberson)

I think the plan was approved some time in 1936, probably the early part thereof. The plan was confirmed on January 18, 1937. The proceeding was under Section 77B. The claim of \$1,507.11 against Park View Manor purchased by me from Michael Tauber & Co. was charged off; it did not participate in the 77B reorganization.

I never received anything by reason of these claims and don't expect anything from Park View Manor. On Page 3 under the heading "Securities to participate", Paragraph 4 of the plan stated:

"Creditors holding securities evidenced by bonds issued pursuant to the first and second mortgage trust indentures above referred to and the stockholders of the debtor company shall participate in and be affected by this plan. This plan shall not affect the general unsecured open account creditors of the corporation, amounting to approximately six hundred and seventy-five dollars."

269 The item of \$675 represents unpaid current bills for operation, payable by the debtor in possession. When I bought the claim, it had already been wiped out. The plan for Park View Manor was confirmed June 25, 1935.

Said claim against Park View Manor was given no participation because Mr. Kulp agreed to eliminate it. There were no other claims in the same class as that of Kulp & Co. that were likewise eliminated.

MYRTLE JOHNSON

(Cross examination by Mr. Herriott)

The plan for Los Angeles under Article 10 provides that general creditors shall receive a voting trust certificate representing one share of stock for each \$100 of principal amount including interest of their claims. The plan states there was due to the assignee of trustee in bankruptcy of Jacob Kulp & Co., \$2,145.04.

MYRTLE JOHNSON

(Further redirect examination by Mr. Roberson)

This plan was confirmed on December 14, 1938. It was proposed by the bondholder's committee consisting of W. A. Westfall, Raymond T. Cragin, Louis Goldman and L. A. Rose. It was in fact a joint plan proposed by certain bondholders and the debtor. I believe that voting trust certificates representing a claim of Jacob Kulp & Co., which I had purchased were issued to Joseph Baumann.

I don't recall the amount of the certificate. So far as I recall, none of the other plans stated that the claims of Jacob Kulp & Co. was due to assignee of trustee in bankruptcy of Jacob Kulp & Co.

270 Hearing before Special Master Archie H. Cohen
April 22, 1946

PAUL E. DARROW

(Examination by Mr. Mulfinger.)

(An amendment filed by Paul E. Darrow to an intervening petition which he had previously filed in the Jacob Kulp & Co. bankruptcy case setting forth that various subsidiaries had claims against the bankrupt was marked Trustee's Exhibit No. 14 for id.)

I signed and swore to Trustee's Exhibit No. 14. In that document I list claims which the twenty-seven subsidiaries allegedly had against the bankrupt.

I also listed a claim of Federal for \$3,006.25. I obtained the information from the bookkeeper.

At the time I signed the amendment to the intervening petition, I believed that the bankruptcy was indebted to Postal in the sum of \$16.25. (In answer to the question as

to whether the witness appeared in court and offered evidence as to that fact, he stated.) I wasn't present and didn't testify at any of the hearings.

I never appeared for the purpose of having this matter determined. I don't know whether there were any hearings and made no inquiry to find out. I never heard of any ruling on the petition.

My attorney told me something about it but I had forgotten what. I don't remember whether I voluntarily withdrew the petition or not. Attorney Burke Williamson handled that matter for me. I understand now that Louis Goldman represented Baumann.

As far as I remember, I commenced work on reorganizing the subsidiaries within about a week after I took 271 office.

I believe my attorney informed me of the final decision of the court on the intervening petition. I participated in drafting the plan for Postal.

I actively participated in the promulgation of the plans of all the subsidiaries. I studied the plans and recommended to the court that they be adopted. I don't remember whether I knew prior to the Kulp & Co. bankruptcy that Baumann had an alleged claim against the bankrupt. I knew that Baumann had claims against a number of the properties.

It was my original idea to pay \$750 for the books and records of the bankrupt. I wanted them because they were necessary. I told Miss Johnson that I wanted the books, records and coupons and she said she would take care of it. I talked to my attorney about the matter. He didn't tell me that anyone who purchased the accounts receivable would get the ledgers.

I discussed the matter with Miss Johnson and maybe with Mr. Marquiss and maybe my attorney. I don't believe that I knew that Miss Johnson was buying the accounts receivable and bonds. I knew she got some bonds because I bought some from her afterwards.

I didn't ask her what she paid for the bonds or the accounts receivable. The books and records of the bankruptcy were never out of my office during the bankruptcy proceeding, and were available to me at all times.

Several times I advised Mr. Kulp to go into bankruptcy. I received nothing at the time I gave Miss Johnson my

check but my lawyer had gotten an order allowing me to purchase the books and records so there was nothing for her to get me.

(Q: How did you find out that the books and records and coupons were to be sold?) I told Miss Johnson I would like to get the books, records and coupons. I was not interested in buying the claims against the subsidiaries because of lack of money. I don't remember whether we had six or seven thousand dollars in the Federal account at that 272 time.

PAUL E. DARROW

(Examination by Mr. Roberson)

I probably knew prior to October 30, 1936, that the books, records and coupons would be sold.

I don't remember whether I first found out that Miss Johnson bought the accounts receivable before the hearings in this case or not.

I didn't know what Klein had sold to Tauber in the judicial sale. I presume that my attorney investigated to find out what was offered for sale. I told my attorney that I ought to put in my claim, or he suggested it.

I don't remember whether or not I discussed with my attorney the question of buying the accounts receivable. I don't know now whether Klein offered for sale the books and records. I know I wanted the books, records and coupons and got them for \$750. So far as I remember, I didn't discuss with my attorney from whom he was going to get them. I left the entire matter of getting them up to my attorney-not Miss Johnson. I suppose my attorney was collaborating with Miss Johnson. At any rate, he got the court order.

Previous to obtaining the court order, I must have agreed with somebody, presumably Miss Johnson, to pay \$750, but I don't remember. I think I set the figure. The books and records remained in my possession during the Kulp bankruptcy.

The books of the subsidiaries had corresponding entries reflecting all transactions of the subsidiaries and top trusts with Kulp & Co. The principal reason for obtaining the books of Kulp & Co. was to have available information as to who held the securities. They also reflected early costs or expenditures before 1934.

The information regarding the security holders of the subsidiaries was solely contained in the books of Kulp & Co. I think the subsidiaries had no independent records.

273 The records of the subsidiaries may have contained some information (regarding security holders) but I know it was all contained in the Kulp & Co. books.

PAUL E. DARROW

(Further examination by Mr. Mulfinger)

I don't remember when I first learned that Joseph Baumann was the owner of the various claims against the subsidiaries. At the time I recommended the approval of the various plans of the subsidiaries I had satisfied myself that all claims allowed in the reorganizations were correct. The only time I knew specifically about claims in several of those reorganizations in favor of "Jacob Kulp & Company, assignee" was at a hearing here. I don't remember in any of the plans of seeing the name of Jacob Kulp & Company at all until a couple days ago.

I examined these plans but there are several things I probably forgot. I think the first time I learned that Joseph Baumann was the owner of these claims was at this hearing. Miss Johnson never so informed me.

(Trustee's Exhibit No. 14 was received in evidence.)

PAUL E. DARROW

(Examination by Mr. Courshon)

I suppose I first learned that Tauber had bought the assets of Kulp & Co. when I made out the checks. I don't think I learned what they purchased or what they paid for it. I know that Kulp & Co. had certain accounts receivable against the subsidiaries.

I must have learned this before I purchased the books and records because the petition that I filed listed them. When I made out the checks to purchase the books and records, I did not inquire as to what happened to the other assets or what had been paid for them. At the time I purchased the books and records I knew that Kulp & Co. had accounts receivable due from the various subsidiaries.

274 I knew that shortly after I became trustee. I don't

remember whether I took any action to attempt to acquire the accounts receivable.

I think that I told my attorney something should be done in the matter. I don't know whether I abandoned the claim.

I knew that Jacob Kulp & Company or assignee had filed claims against some of the subsidiaries.

I didn't file objections, so far as I know. I was president of the various subsidiaries and the debtor was left in possession. I don't remember what was done in regard to the claims against the subsidiaries. Mr. Williamson handled the details. Claims were allowed against some of the subsidiaries.

I know that one was allowed against Los Angeles.

I think the claims were just and all the just claims were allowed.

According to Trustee's Exhibit 14, I filed a claim against Kulp & Co. of \$16.25 on behalf of Postal. I don't know how I determined that Kulp & Co. owed Postal \$16.25 if Kulp & Co. had a \$30,000 claim allowed against Postal.

I believe that everything my attorney did was done with my knowledge and consent.

I believe that when my attorneys filed these claims against Kulp & Co. they did so with my knowledge and consent. I take the responsibility for any acts as trustee which were done by my attorneys or by me personally.

In determining the validity of claims filed against the subsidiaries, I was using my own judgment. I thought the accounts receivable against the subsidiaries had a nuisance value. I presume I would have paid \$1500 for them but it is all a matter of guess.

275 I don't remember whether or not I knew that Miss Johnson had instructed her attorney to have Tauber & Co. bid as high as \$10,000 for those assets. So far as I remember, I didn't discuss it with her, nor did she tell me that she was going to buy the assets.

I probably, learned prior to these hearings, that Miss Johnson bought them through Tauber, but I don't remember.

If it wasn't for these questions, I would still say that I think that Jacob Kulp & Co. owed Postal \$16.25, but now I am in doubt.

PAUL E. DARROW

(Further examination by Mr. Roberson)

I realized that the value of the equity of the top trusts depended upon the number of claims allowed in the plans of the subsidiaries. I realized that the insertions in the plans of the claims of Kulp & Co. had the effect of placing these claims between the bondholders claims and the equity of the top trusts.

I think I made an effort to minimize as far as possible the claims in favor of Kulp & Co., and I think my petition was part of the effort to offset the claims.

I did not at all times follow up what my attorney did.

I am satisfied my attorney told me everything of importance that was done but I now have no knowledge whether I knew that my asserted claims against Kulp & Co. were drawn out.

In regard to the set-offs which I asserted against the claims of Kulp & Co., I suppose that all proper set-offs were allowed.

I would guess that my attorney checked the matter.

I do not know whether in any particular plan of the subsidiaries the claims by Kulp & Co. were reduced by amounts owing from Kulp & Co. to that subsidiary.

276 • Hearing before Special Master Archie H. Cohen
May 22, 1946

CLAIRE M. MARQUISS

(Examination by Mr. Roberson.)

(A document setting forth the amounts of cash on hand and in bank belonging to Jacob Kulp & Co. from December 21, 1924 through June 30, 1934, was marked SEC Exhibit 22. A summary of the balances in building and cash accounts at the end of each year from December 31, 1924 to December 31, 1933 and as at June 30, 1934 on the books of Jacob Kulp & Co. was marked SEC Exhibit 23 for id. A document containing certain data relating to the reorganizations of the subsidiaries of Federal was marked SEC Exhibit 24 for id. A document containing certain data relating to the reorganizations of the subsidiaries of Federal was marked SEC Exhibit 25 for id.)

(SEC Exhibit 22 and 23 were received in evidence subject to verification.)

So far as I can recall, Jacob Kulp & Co. had no other bank accounts than those shown on SEC Exhibit 22.

The funds that went into the bank accounts shown on SEC Exhibit 22 came from the rents of the buildings which Jacob Kulp & Co. operated.

(The master stated that the answer would be limited to the time when the witnesses commenced working for Jacob Kulp & Co., which was December 1928.)

I might add that Jacob Kulp & Co. had capital of \$100,000 which is presumably reflected in the cash balances in some measure. I am not in a position to say positively that all of the cash balances were derived from rental income.

277 (In view of the witness's statement that he was not positive, the Master sustained the objection and struck the answer.)

From the time I started in its employ, Kulp & Co. managed these twenty-seven properties, which are the subsidiaries here, and the income was collected by Kulp & Co. and deposited in bank accounts of Kulp & Co., as shown in SEC Exhibit 22.

Some of the income derived from these twenty-seven buildings was included in the item noted "cash on hand" in Exhibit 22. Jacob Kulp & Co. had capitalization of \$100,000 which presumably would be a portion of the items shown on Exhibit 22.

I personally made deposits.

Possibly Miss Johnson handled some of the deposits. All of these accounts were directly kept by me under Miss Johnson's supervision. I started working there in December 1928 and cannot say of my own knowledge that any of the capital represented a deposit.

I don't know whether the \$100,000 capitalization was put in at one time or not. At any rate, it had all been contributed prior to the time I went to work for Kulp & Co. I don't know whether that capitalization contribution represented cash.

The practice was to deposit such cash receipts as came in in the bank accounts of Jacob Kulp & Co. Whatever cash Kulp & Co. had on hand or in banks was not separated from the cash receipts from these twenty-seven building corporations. These practices persisted during the time Kulp & Co., was in operation and ceased in 1933.

As of July 31, 1933, Kulp & Co. had the following bank accounts and cash:

Continental Bank	\$3,636.60
New York Trust Company	98.12
Chemical Bank	8.45
Cash on hand in the office	2,680.34

278 The total of these items is \$6,423.51. At the time, Kulp & Co. ceased operating these buildings, it did not cease operating fragments of its own business. During the balance of the year 1933 that money was used in the operation of Kulp & Co., but how it was used I cannot say.

Mr. Andresen succeeded Kulp & Co. in the operation of these twenty-seven buildings after July 1933. The rents of the twenty-seven buildings had been collected by Kulp & Co. and deposited in its bank accounts. A current account was kept of each building which was credited with each deposit of its funds.

There was an account in the name of "Jacob Kulp, Trustee" in which certain of the deposits were made. That account with the Foreman National Bank is shown in Exhibit 22. Rents from the buildings went into that account. I don't know how a selection was made of the cash items which went into that account as distinguished from the Jacob Kulp & Co. accounts.

I don't recall having had any specific instruction with reference to making deposits of any of the rentals in the trustee account of Jacob Kulp. The balances shown on Exhibit 27 may have been considerably increased at times. The funds in this trustee account were used for the operations of the buildings.

I mean the buildings included in the deposit but I can't say which ones those were. I don't recall why the trustee account was discontinued after December 30, 1931, but it was discontinued. Then funds formerly in the Jacob Kulp, Trustee, account and of the Jacob Kulp & Co. accounts were carried in one account in the several banks.

The receipts that were put into these accounts were used to meet the cash requirements of the buildings and the operation cost of the buildings. Bonds that came due were retired, coupons were paid and the expenses of Jacob Kulp & Co. were also paid. So that out of the single general account carried in the name of Jacob Kulp & Co. in the several banks listed on Exhibit 22 and out of the cash on hand, Jacob Kulp & Co. paid the current

bills and the expenses of the twenty-seven buildings and the current bills and expenses of Jacob Kulp & Co. 279 Accounts were kept to show an account current with each building and every disbursement or receipt which affected a certain building company was reflected in that account current so that at all times it showed whether Kulp & Co. owed the building or the building owed Kulp & Co. The obligations of Kulp & Co. for the expenses of Kulp & Co. were shown in the expense account of Kulp & Co.

Their books and records had a separate account for each building to show what income and disbursements there were as affecting each building and there was a separate account for Jacob Kulp & Co. showing its income and disbursements and whether the building owed Kulp & Co. or Kulp & Co. owed any of the buildings.

In SEC Exhibit 23, the figures in the column headed "credit", reflect the credit balances that Jacob Kulp & Co. owed the buildings at that time.

I am familiar with the books and records of Kulp & Co. and the practices of keeping accounts in those books.

The figures in the column headed debit apparently indicate the debit balances due from those companies (SEC Exhibit 23) to Kulp & Co.

The bank accounts in these banks were used in the payments of obligations of the subsidiaries when the credit so far as the books reflected credit to each of these accounts was less than the amount paid out. That was the practice all the time with respect to the handling of these funds in payment of obligations by any of the subsidiaries. In other words, these were in the nature of advancements where the moneys were drawn for a subsidiary before the actual deposits were equal to the moneys withdrawn to pay their obligations. The same is true with respect to payment of operating expenses of Kulp & Co.

Disbursements on behalf of Kulp & Co. were made out of these bank accounts and cash on hand irrespective of the amount of credit that Kulp & Co. had in these bank accounts and cash on hand. These disbursements were general operating costs of the business, such as salaries, rent, electric light and stationery.

280 In the earlier years; there were no management fees charged to these buildings, but I believe in the latter years there were some charges.

On any occasion that Kulp & Co. had to spend money, it was taken out of the bank account.

All bills of Kulp & Co. and all expenses of whatever nature were paid out of these bank accounts or cash on hand, to the best of my knowledge. Separate bank accounts were instituted for each of these subsidiaries about September 1, 1934. Prior to that time, two or three buildings had separate accounts.

In such case, the trustee collected the rents, retained a portion that was covered by the requirements of the trust indenture, and credited the balance to the bank account in the name of the company. The New York Trust Company was the trustee for Postal and followed the above mentioned procedure all during the running of the bond issue, including the period prior to 1934. I believe Ferry Station was handled in the same manner.

The New York Trust Company in those two instances collected the rents. Those are the only two subsidiaries handled in that way, so far as I now recall. After the payments required under the trust indenture, the balance would be deposited to the credit of the two companies in their bank accounts, if I remember correctly.

The checks against these accounts were drawn by the officers of the companies who were Kulp and Johnson. The indenture trustee had no right to draw against these accounts.

The totals of cash on hand and in bank as shown on SEC Exhibits 22 and 23 do not include any cash balances which might have been to the credit of Postal and Ferry in their individual bank accounts. The reason is that those two accounts were in the names of the two subsidiaries.

281 Some of the expenses of the two companies might be paid out of their individual accounts or the funds might be transferred to the general account of Kulp & Co. The only expenses paid out of these accounts were for the two companies. Any other usage that might be made of that money would be made through Jacob Kulp & Co.'s drawing down a portion of it and crediting it on its own books. The only manner in which Kulp & Co.

would use funds out of those accounts would be by having the officers draw against those funds for deposits to the credit of Kulp & Co, and then it went into the general accounts the same as the funds we have been discussing.

As I recall, Jacob Kulp was President and Treasurer and Miss Johnson was secretary of both Postal and Ferry. Mr. Kulp was also President and Treasurer and Miss Johnson was secretary of Jacob Kulp & Co.

The bank accounts in which these particular funds were deposited were used to pay expenses of Kulp & Co.

I don't recall that any other subsidiary besides Postal and Ferry had separate bank accounts. Jacob Kulp & Co., from the time I went to work for them, had other sources of income beside the rental receipts from twenty-seven subsidiaries. It had income from the sale of bonds of the subsidiary companies. The bonds were taken from the companies at a standard bond discount and sold for par by Jacob Kulp & Co. I don't recall any other source of income or receipt than the income from the sale of bonds.

282 Hearing before Special Master Archie H. Cohen
May 29, 1946

(A document containing certain data relating to claims in the reorganization proceedings of three subsidiaries of Federal, namely, Ferry, Irving Park and McKinley Park, was marked SEC Exhibit 26 for id. A document containing certain data relating to claims in the reorganization proceedings of three subsidiaries of National, namely, Berwyn, Los Angeles and Postal, was marked SEC Exhibit 27 for id.)

JOHN I. MAYER.

(Examination by Mr. Herriott)

My name is John I. Mayer. I am an attorney-at-law, and one of the attorneys of the objector, Securities and Exchange Commission. I prepared or helped prepare SEC exhibits 24 and 25. The work I did was confined to an examination of the records in the United States District Court of the Northern District of Illinois, Eastern Division, and the information was gathered there by Mr. Kelly and myself from the files in the Clerk's office. I exclude from the information gathered from that source

the cases that were handled through State Court foreclosures and those cases in which there was no reorganization and one in which there was a voluntary reorganization.

"No reorganization" as used on Exhibit 24 means that we understood that no reorganization had taken place and we left that to be verified by the attorney for Darrow, Darrow or Miss Johnson.

In Exhibit 24 where the word "none" appears in the column "Provision for claim of Kulp & Co. in Plan", it means that we found no record of a claim by Kulp & Co. having been filed. In the next column where the word "none" appears in the column headed "Provision for Claim of Kulp & Co. in Plan", that means that no provision was made for any claim of Kulp & Co. for the plan of that particular subsidiary. As far as any specific provision for an unsecured claim is concerned.

We weren't considering any possible claim that might possibly have been based upon ownership of bonds or any other securities.

283 We didn't purport to cover any claims except those of Kulp & Co. I am not certain whether provision for any other unsecured claims was made in cases where no provision was made for an unsecured claim for Kulp & Co.

I examined the plans of Ferry, Irving Park, McKinley Park, Los Angeles, Postal and Berwyn to determine whether or not a provision was made for a claim asserted by Kulp & Co. or an assignee of Kulp & Co. and to see how those plans were treated in the plan. In most of them, provision was made that the statute of limitations would not run against those claims but the holders would not be allowed to assert claims against the reorganized company until either the bonds had been paid or the maturity date had been reached. However, I believe that in the case of Los Angeles provision was made for giving to the claimant voting trust certificates representing stock of the reorganized company. In that case, the provision was that for each \$100 of unsecured indebtedness a voting trust certificate representing one share of stock would be issued.

An examination of the Los Angeles amended plan indicates that prior to the reorganization the corporation had

100 shares of common stock of no par value issued for \$1,000. The plan authorizes the increase of the stock not less than 14,305 shares of no par value, all of which was to be placed in a voting trust.

Thus, the holder of the claim of Kulp & Co. received either 21 or 22 shares represented by voting trust certificates.

I do not know whether the books of Kulp & Co. or the books of the various subsidiaries would show if Kulp & Co. had any claims against the subsidiaries; but in Exhibits 24 and 25 what we purported to show was whether or not a claim was actually filed on behalf of Kulp & Co. or its assignee.

In Exhibits 24 and 25 the column headed "Claims of Kulp & Co. Filed" is not intended to indicate whether or not Kulp & Co. had a claim against the subsidiaries but whether a claim was filed.

284 In column 5 of SEC Exhibits 24 and 25 we have set forth the cases in which an attempt to assert claims was actually made by Kulp & Co. or its assignee.

For example, in the case of Irving Park, a claim was filed for \$4,375.36 and provisions for the claims for the same amount was made in the plan. I haven't examined Kulp's books to determine whether such a claim existed according to the books, but I know that the claim was filed.

These Exhibits 24 and 25 do not purport to indicate whether or not any of the subsidiaries had claims against Kulp & Co. They indicate simply that the court records show that in the cases where the word "none" appears that no claim was filed on behalf of Kulp & Co. or its assignee. We didn't purport to determine whether or not there was a claim in existence.

We included in Exhibits 24 and 25 the subsidiaries against which Kulp & Co. asserted no claims because we felt that the attorney for Darrow might figure we had not covered the subject completely unless we had included all of them and because it was necessary to examine the cases of all the subsidiaries to determine in which ones claims had been allowed, filed or both.

MYRTLE JOHNSON.

(Examination by Mr. Roberson).

I was employed by Kulp & Co. from the time of its incorporation in 1921 continuously to the time it closed. During that time, I was an officer and the books, records and bank accounts were handled under my direction. On SEC Exhibit 22, I have checked the amount in the New York Trust Company as of December 31, 1928 and it should be \$7,513.67 instead of \$9,513.67 as shown on the exhibit.

I assume the reason is that the figure "7" on the books is either indefinite and was probably mistaken for a nine.

(The Master granted leave to the Securities and Exchange Commission to amend Exhibit 22 on its face to show the correction from \$9,513.67 to \$7,513.67 and likewise to reflect the correction in the total on the bottom of the column which should be \$141,576.54.)

In addition to the bank accounts of Jacob Kulp & Co. shown on Exhibit 22, there was a savings account at the Continental Illinois Bank for which a separate ledger sheet is kept indicating that on December 31, 1924, 285 there was a balance in said account of \$2,204.58.

In the early part of 1925 that account was closed out. As I recall it, it was just established during that one time. As I recall, the money that went into that savings account was in connection with a loan at the time we were building Park View Manor. I imagine when the account was closed the money was transferred to the general funds of Kulp & Co. in the checking account at the Continental Bank and was used by Kulp & Co. for its general purposes. As I recall, the Park View Manor loan was made by the subsidiary, Park View Manor, and was personally guaranteed by Jacob Kulp and By Jacob Kulp & Co.

I know the loan was paid but I don't know through which source it was paid. As far as I recall, there were no funds of Jacob Kulp & Co. in existence outside of the funds listed on SEC Exhibit 22 and the funds in the savings account at the Continental Bank. These bank accounts and cash on hand and the savings account would show on the cash items of Kulp & Co.

That is true through the period covered in Exhibit 22, that is, from December 31, 1924 to June 30, 1934. During this entire period, it was the practice of Kulp & Co. to receive the rentals from the twenty-seven corporations and also the income that Jacob Kulp & Co. received through the operations of the business and to place these funds in these various accounts in the name of Jacob Kulp & Co. However, there were not twenty-seven corporations during all of that period. Some of the corporations came to life after that period.

Some of the companies had separate bank accounts which were maintained and as I recall Ferry and Postal had their own bank accounts and in those accounts the trustee under the trust indenture securing the mortgages would reserve a certain amount to take care of the current mortgage requirements.

Checks were drawn against these accounts by the corporation and Mr. Kulp or I would sign them as an officer of the corporation. The purpose of the checks, I would say, was for the operation of the company. I don't recall, without referring to the records, whether any of the funds drawn by checks of the corporation were transferred to accounts of Jacob Kulp & Co. In the case of Postal and Ferry, the New York Trust Co. had a power of attorney to collect the rents and it would withhold the amount required under the trust indenture.

286 The balance would be deposited in the checking account with the New York Trust Co. and the officers of the respective corporations would issue checks to pay the operating expenses, interest on first mortgage bonds and taxes. After some time there might have been a transfer of net proceeds in these two accounts to the general account of Kulp & Co. but I believe most of the time or all the time Station "F" (known as Postal) and Ferry Station were indebted to Jacob Kulp & Company. In addition to the funds shown on the bottom line of Exhibit 22 there were during the years covered by this exhibit some additional cash balances in these two accounts of the subsidiaries.

The stock of these two subsidiaries was all owned by Jacob Kulp individually and he may have authorized the issuance of checks out of those accounts at various times and which may have been deposited with Jacob Kulp & Co., but I wouldn't say for sure without referring to the

records. These two accounts contained money which belonged exclusively to Postal and Ferry.

The bank accounts and cash on hand shown in Exhibit 22 contained moneys received from the operation of the subsidiaries and also contained funds belonging to Jacob Kulp & Co. Jacob Kulp & Co. was incorporated, as I recall, for \$100,000 and that was paid in over a period of time in cash shortly after corporation was formed. These funds and the proceeds of bond issues were placed in those accounts. The rentals were put in there also as were commissions from insurance premiums. The accounts included the proceeds of Commercial Station, and I believe from funds of United States Parcel Post Company Building in Cleveland, which was owned by Mr. Kulp. The accounts also included profits from sales of securities in our general securities business, the proceeds of a loan from Joseph Baumann in June of 1930 in the sum of \$90,000, the proceeds of a loan from the New York Trust Company in the sum of \$60,000 made about May 29, 1930 and the proceeds of various loans made at the banks. Thus, the cash results were obtained from the operations of all the businesses of Jacob Kulp & Co., which included the management of the properties and selling of bonds and the commissions that were charged on the bond issues of Commercial Station.

Commercial Station was solely owned by Jacob Kulp personally.

Neither Jacob Kulp nor Jacob Kulp & Co. kept any separate bank accounts for the subsidiaries, except in the case of Postal and Ferry. As far as I remember, Jacob Kulp & Co. kept books and records showing the amounts of rents collected for the various subsidiaries and showing that these rentals belonged to the various subsidiaries.

287 The rents were co-mingled by Kulp & Co. with all his other funds and assets.

The only disposition made of collection on behalf of the subsidiaries was to put the funds into these bank accounts and cash on hand. Up to about 1929, no management fee was deducted from the rentals and the gross rentals were deposited to the credit of the various corporations on the books of Jacob Kulp & Co.

The funds that I have testified to including the \$90,000 loan and the \$60,000 loan were deposited in these bank accounts of Jacob Kulp & Co. and reflected year end

totals. The loan of \$60,000 from the New York Trust Company was made about May 29, 1930, which was about the same time as the \$90,000 loan from Baumann. We wanted to pay interest on the Park View Manor bonds. The loans were made by Jacob Kulp & Co. and Jacob Kulp guaranteed the Joseph Baumann loan. I don't recall whether he guaranteed the others but I don't think so.

The purpose of the Baumann loan was to pay interest on the Park View Manor bonds. Mr. Kulp got securities from his step-daughter which permitted him to make the loan from the New York Trust Company and the proceeds of this loan were used in the operation of the various properties.

These funds were put in the general funds from which all the operating expenses of Jacob Kulp & Co. were paid.

Hearing before Special Master, Archie H. Cohen,
June 4, 1946.

288 CLAIRE M. MARQUISS.

(Examination by Mr. Mulfinger.)

I am familiar with the books and records of National, Federal and Jacob Kulp & Co. Prior to September, 1934 some of the subsidiaries had separate bank accounts in their own names.

These were Postal, Ferry and Dallas. In the case of Ferry, monies in the corporation's bank accounts were transferred at times to the account of Kulp & Co. I have examined the records to ascertain the amount so transferred for the period from December, 1925 to September, 1933.

(The witness testified to specific amounts transferred on certain dates from the accounts of Ferry, Postal and Dallas, respectively, to the account of Kulp & Co. However, at p. 1464 he stated that he was not sure that he included all of the items. For that reason and because Tr. Ex. 1, 2, 3 later introduced at p. 1480 are compilations subsequently prepared by him on the same matter, the figures here are not given.)

CLAIRE M. MARQUISS.

(Cross examination by Mr. Herriott)

The funds transferred from Ferry to Kulp & Co's account were used for the general purposes that the funds of Kulp & Co. were used. They might have been used for Ferry.

On June 30, 1934, Ferry owed Kulp & Co. \$34,864.21.

According to SEC Ex. 23, most of the year end balances show Ferry with a debit balance. It shows that Ferry had a credit balance in 1927 (\$32,722.97) and 1928 (\$21,728.43).

Ferry had debit balances for 1929 (\$2,273.65), 1930 (\$13,893.45), 1931 (\$31,491.87), 1932 (\$40,016.40), 1933 (\$40,614.52) and as of June 30, 1934 (\$34,864.21).

289 According to SEC Ex. 23, Postal had no credit balances, but had debit balances, at the end of each year.

Dallas had its own bank account. \$84,450.00 was drawn from that account and put into the account of Kulp & Co. from January 5, 1927 to July 14, 1933. The credit balance of Dallas as of December 31, 1928 was \$7,307.15.

\$3,000 was withdrawn from Dallas' account during 1928. On December 31, 1927, the credit balance was \$11,461.00. Without the records, I cannot explain how the credit balance at the end of December, 1928 was almost \$4,000 less than it was the previous year, when \$3,000 was withdrawn by Kulp & Co. from the Dallas account during 1928.

During 1929, \$10,000.00 was drawn from Dallas' account. The credit balance of Dallas was \$7,307.15 on December 31, 1928, and it was reduced to \$6,384.58 in 1929, the year Kulp & Co. drew \$10,000 from that account. The difference is that Kulp & Co. expended more for Dallas than they drew from Dallas during the previous year. When I stated that money drawn from Dallas' account was used by Kulp & Co. for its purposes, I meant that the money was used to some extent for the benefit of the subsidiaries, since Kulp & Co.'s purpose was the operation of these properties.

During the period under discussion, Kulp & Co. made a practice of buying bonds for the accounts of the subsidiaries for the purpose of their sinking funds. The funds of Ferry, Postal and Dallas were not used to procure bonds for their sinking funds.

Their sinking funds were operated by the bank that collected the rent, and the mortgage did not provide for retirement. I don't recall any instance where Kulp & Co. bought bonds for the account of these three subsidiaries during the period in question, but I cannot be sure.

CLAIRE M. MARQUISS.

(Examination by Mr. Roberson)

The books of Kulp & Co. showed a credit in its favor and a debit on the subsidiary's books of any amount advanced to purchase bonds for the sinking fund.

290 The figures on SEC Ex. 23 reflect the debits and credits after debiting and crediting to the respective accounts any amounts paid for the subsidiary for interest, principal or sinking fund.

Hearing before Special Master Archie H. Cohen
June 12, 1946

(Mr. Roberson was given leave to withdraw SEC Ex. 23 and substitute another document as SEC Ex. 23.)

(Two documents containing provisions of the plans of reorganization of three subsidiaries of Federal and three subsidiaries of National were marked SEC Ex. 24-A and 25-A for id., respectively, and received in evidence subject to an objection regarding materiality and relevancy. It was understood that SEC Ex. 21 through 27 had been verified and received. Mr. Herriott stated that he had no further objection except as to relevancy and form. Mr. Herriott reserved the right to show, in connection with SEC Ex. 22, that Kulp & Co. had other cash besides that in its bank account.)

CLAIRE M. MARQUISS.

(Examination by Mr. Mulfinger)

(Three documents reflecting the amounts of money transferred from the bank accounts of Postal, Ferry and Dallas to the accounts of Kulp & Co. were marked respectively Tr. Ex. 1, 2 and 3 for id. as of 6/12/46).

I prepared said Tr. Ex. 1, 2 and 3 as of 6/12/46. They correctly reflect the transfers of money from the accounts of the three subsidiaries to those of Kulp & Co. during the period of the examination.

(Mr. Herriott objected to the exhibits on the ground they are irrelevant and immaterial, and also objected to the use of the word "withdrawn" in the headings. Mr. Herriott agreed that the word "transferred" was preferable but said he did not think it necessary to change the exhibit headings if it was clearly understood that the exhibit figures represented money "transferred" from the subsidiaries' accounts to that of Kulp & Co.)

The various items stated in Tr. Ex. 1, 2 and 3 of 6/12/46 were withdrawals from the several bank accounts of the subsidiaries and were handled in the ordinary way. Those moneys were deposited in one or more of the bank accounts of Kulp & Co. as set forth in Ex. 22.

291 The subsidiaries were credited on Kulp & Co.'s books with the amounts of the various withdrawals shown on Tr. Ex. 1, 2 and 3 for id. as of 6/12/46.

CLAIRE M. MARQUISS.

(Examination by the Master)

These transfers from the subsidiaries' accounts to Kulp & Co.'s accounts followed a method of business that Kulp & Co. had theretofore engaged in. These funds were conveyed into what I previously designated as the "jackpot account."

CLAIRE M. MARQUISS.

(Examination by Mr. Mulfinger)

Postal and Ferry had their accounts with the New York Trust; and Dallas with Foreman National Bank of Chicago or its successor.

(Tr. Ex. 1, 2 and 3 were received in evidence, and objection to their materiality and relevancy was noted.)

PAUL E. DARROW.

(Examination by Mr. Courshon)

(Claim #17 filed by Darrow on 9/17/36 in the Kulp & Co. bankruptcy was marked Guild's Ex. 1 for id. of 6/12/46.)

That is a claim of \$1,428.55 plus \$204.37 interest, total \$1632.92. I now have no idea what transactions between

me as trustee of National and Federal and Kulp & Co. gave rise to that claim. So far as I remember as trustee I had no dealings with Kulp & Co.

I don't remember what "miscellaneous advances" were made to the bankrupt or that I advanced \$1428.55 to Kulp & Co. or that Kulp & Co. repaid any advances made to it by me as trustee.

(Claim filed by Darrow, as trustee, on 6/15/36 in the Kulp & Co. bankruptcy was marked Guild's Ex. 2 for id. as of 6/12/46.)

292 These claims made by me constitute advances by the trusts of which I became trustee. I don't know whether my accounts mention the claim.

(Guild's Ex. 1 and 2 as of 6/12/46 were received in evidence subject to the objection of immateriality.)

I don't believe I realized anything on this claim. I turned it over to my attorney. I don't believe a dividend was declared in the Kulp & Co. bankruptcy.

293 Hearing before Special Master Archie H. Cohen
June 20, 1946

CLAIRE M. MARQUISS.

(Cross Examination by Mr. Herriott)

I am employed by Mr. Mosser, trustee of National and Federal. I was formerly employed by Kulp & Co. and then by Mr. Darrow as trustee. I was never employed by Colonial.

However, I performed services in connection with keeping the books and records of Colonial from the formation of the company until the end of Kulp & Co.'s activities and partially through the Andresen regime.

I kept the books and records of Colonial up to the time of Kulp & Co.'s bankruptcy, and continued to perform such services for Colonial during the time Andresen acted as trustee. After Darrow became trustee, I may have performed some incidental services for Colonial but nothing much. However, I can't recall exactly. I didn't keep their books and records so far as I can recall.

Colonial was in the business of general securities dealing.

Colonial employed about five people.

It never employed more than eight. They dealt in securities of the various subsidiaries and also of other com-

panies. It engaged in this business from about 1930 to 1938.

I entered the employ of Kulp & Co. in December, 1928.

I did general accounting work and kept the books and records. Kulp & Co. on occasions had call loans out with banks.

294 It had \$15,000 out on call through the Foreman Bank at December 31, 1926 and \$75,000 at December 31, 1927. It had \$25,000 through the New York Trust at December 31, 1926, \$50,000 at December 31, 1927; and \$100,000 at December 31, 1928. The figures on SEC Ex. 22 represent actual bank balances and do not reflect the amounts of the call loans.

Call loans exist when excess money in a bank account at the request of the depositor is placed by the bank on loan subject to 24-hour recovery. The money for the call loans was taken out of the bank account. The business of Kulp & Co. consisted of managing the properties of the subsidiaries and selling their securities.

Kulp & Co. had salesmen who sold bonds which Kulp & Co. had to offer. The bonds had previously been delivered to it by the subsidiaries. When bonds were delivered to Kulp & Co. by the subsidiaries, the bonds would be placed in the inventory of Kulp & Co. and credit for the amount of the bonds less the commission would be given to the subsidiaries.

Kulp & Co. would credit the subsidiary with the par value of the bonds less the commission prior to the time that Kulp & Co. sold the bonds.

The proceeds of the bonds would generally be used to finance construction of the buildings.

In the case of 6929 North Clark Street, I know that the figure for bond proceeds appears on SEC Ex. 23. \$42,642.14 represents the credit it received for its bonds since the building was not completed until the succeeding year so that there could not be anything but bond proceeds in the credit balance. As to the other subsidiaries, I cannot say whether the credit balances shown on SEC Ex. 23 contain bond proceeds.

However, it is possible that some of these credits do include bond proceeds. I previously testified that I could not find certain telephone bills and that they had been destroyed.

I can't recall having seen any actual destruction.

I previously testified that the earliest telephone bill I could find for Colonial under the number Dearborn 8666 was dated September 21, 1940.

295 Colonial and Darrow divided the telephone expense from the beginning of Darrow's trusteeship in 1935 until Colonial's business practically ceased to exist.

Thereafter Darrow paid all the telephone bills except such items as could be individually allocated.

(Telephone bill dated December 21, 1935 for Dearborn 8666 was marked Respondent Darrow's Ex. 1 for id.)

This exhibit is one of the bills which he had previously been unable to find.

The pencil notations thereon indicate that the Trusts paid \$52.50, Colonial \$61.85, U. S. Building Corporation, the owners of Kulp's Cleveland Building, \$20.25, and Columbus Park \$3.00. There is also an item marked "Lincoln" of \$12.80 which I do not recognize.

(Telephone bills for Dearborn 8666 covering the months from January 21, 1936 through July 21, 1940 excepting bills for April 21, 1936, June 21, 1936, August 31, 1937, March 21, 1938, May 21, 1939, September 21, 1939 and December 21, 1939, were marked Respondent Darrow's Exhibits 1-A to 1-Z and 1-AA to 1-VV for id.)

The exhibits just marked appear to be the telephone bills made out to Colonial for Dearborn 8666 from January 21, 1936 to July 21, 1940 with the exception of seven bills.

These bills cover the period for which I said I previously could not find bills. Pencil notations thereon indicate the ones charged with a portion of the bill.

The fact that a bill such as Respondent's Ex. 1-B does not contain pencil notations does not indicate that no allocation of the bill was made because in some cases the allocation was shown on a separate typewritten slip. During that period it was the practice to make an allocation of every bill between Darrow and Colonial.

SEC Ex. 22 purports to show cash balances in the various bank accounts of Kulp & Co. at the various year-end periods shown on that exhibit. In addition, Kulp & Co. had call loans outstanding. Kulp & Co. had assets other than cash during the period covered by SEC Ex. 22 and 23. The amount of the call loans and the cash balances in the bank did not represent all the assets of Kulp & Co.

296 It also had a certain amount of bonds on hand. I mean bonds of the underlying companies in the main.

One of the activities of Kulp & Co. was building management. During the period covered by SEC Ex. 23, the buildings of the subsidiaries shown in that exhibit were managed by Kulp & Co.

It was also engaged in writing insurance. They were selling bonds of the subsidiaries for their own account. They bought the bonds from the corporation and the selling transaction was their own business. When they bought the bonds they credited the corporation with the bonds.

And then they sold the bonds as and when they could. The proceeds of the bonds were used to pay construction costs of the buildings and for other corporate purposes of the subsidiaries. The subsidiaries were not charged any regular management fees until 1930. I find that the first charge was made during the year ending June 30, 1927 in the amount of \$4,725.

Of that amount Dallas paid \$3600, Cleveland \$750, and Ferry \$375. Those were the only subsidiaries against whom any charges for management were made up to June 30, 1927 so far as I could find.

Cleveland was the U. S. Parcel Post Building and not a subsidiary of Federal or National and is not included in SEC Ex. 23. It was owned by Mr. Kulp. Kulp & Co. was formed in 1921, and I believe it managed the properties in question from the beginning. Although it managed the properties of the other subsidiaries prior to June 30, 1927 no charge was made during that period so far as I could find.

The next management charge appears as of June 30, 1929 in the amount of \$3600 against Quincy. In the year ended June 30, 1930 there was a general 4% charge which amounted to \$43,208.13.

The next charge as of June 30, 1931 is a 4% item in the amount of \$37,462.54. In 1932 it was \$36,082.79; in 1933, \$33,915.58; and from July 1, 1933 to November 30, 1933, there was a total of \$10,175.37. I don't know whether that was on a 4% basis. That was the period during which Andresen took over. I entered Darrow's employ immediately after he became trustee of Federal and National. I had general supervision and operation of the accounting and similar matters that I could take care of.

297 I prepared Darrow's final report in the case of Federal from the books I had kept and I also prepared the detailed schedules. I did the same in the case of National. Exhibit B attached to the final report of Federal shows under the heading "Receipts" interest on securities of subsidiaries of \$25,542.34. That represents the cash received as interest on the securities of the subsidiaries and interest on loans which Darrow made to the subsidiaries. That does not include interest which accrued but had not been collected. I showed interest only as collected.

The same figure of \$25,542.34 appears on page 1 of the detailed schedules under the heading "Receipts". That represents the same item of interest shown in the final report and represents interest actually collected.

The righthand column of Schedule 2 of the detailed schedules shows that the "Total Interest Earned" for the period was \$25,542.34. That column contains a breakdown of the interest collected.

The column "Total Interest Earned" is inaccurate because the statement is strictly a cash statement. It should be "Total Interest Collected".

The text matter in the final reports is not my work.

The third item on Ex. C under the heading "Receipts" of the final report of National in the amount of \$63,104.26 represents interest collected except for the item of \$100 which was subsequently explained as an error of a \$100 profit on Armour bonds sold to the sinking fund.

In the case of National as well as Federal I showed interest collected, not interest accrued. \$63,104.28 covers the entire period from June 1, 1935 to August 13, 1943. Ex. B attached to the report covers the period only from December 1, 1940 to August 13, 1943. The item of interest earned on Ex. B is \$28,122.78 and that is included in the \$63,104.26 shown as interest on Ex. C.

298 Said sum of \$28,122.78 represents interest collected and not accrued. The detailed schedules for National at page 1 under "Receipts" show interest on securities of subsidiaries of \$63,004.26 and that represents interest collected. On Schedule 2 of the supplemental schedules I have set out, among other things, the details of the collections of interest from the subsidiaries.

Schedule 2 includes also bond purchases, bond sales, profits and costs, etc. The total of the righthand column "Interest Earned" is \$63,004.26 and that represents in-

terest collected. The difference between the \$63,004.26 on the detailed schedules and the \$63,104.26 on Ex. C of the final report results from a \$100 profit on an Armour bond sold to the sinking fund which was inadvertently included as interest on the books and was not discovered until after the preparation of the original final account.

The correct figure is \$63,004.26. In making up the detailed schedules the \$100 in question was included in profit on sales on Schedule 2 and is the first item—Armour Station.

Armour bonds were purchased for \$825 and sold for \$925, leaving a profit of \$100. This \$100 was erroneously shown as interest in the final report instead of as bond profit. After Mr. Darrow ceased to be trustee of Federal and National, some of the interest which had accrued prior to his resignation was collected.

These collections were made by Mosser. There is still some uncollected interest on some bonds of subsidiaries. The item of \$9609.50 on the first page of Ex. F (pertaining to the Chairman Account) attached to the Final Report of Darrow in the case of National reflects interest actually collected. In the supplemental schedules, I did not break down that item.

I prepared the detailed schedules as the result of a conference at the SEC. I was advised that a court order for the statements would be procured and we discussed what would be required in the supplemental report. Hart, Roberson and Ronan of the SEC and Courshon, Kelly and Adams were present.

I prepared the report in accordance with the outline determined at this meeting. No order had been entered at the time of the conference.

(Roberson stated he thought the conference followed a court order requiring the detailed schedules.)

299 I was advised that such a court order would be secured. I prepared the schedules in accordance with the understanding at that conference regarding content of the schedules.

The aforementioned interest item of \$9609.50 in Ex. F attached to the National Final Report refers only to the Chairman Account.

A statement of cash receipts and disbursements in the Chairman Account is attached to the Final Reports of National (Ex. F) and Federal (Ex. E). The statements are the same in each report.

The total receipts in the Final Report of Federal are \$168,663.16, and in the detailed schedules total receipts are \$166,448.14.

This difference exists because in the detailed statements the item of \$2214.02, representing expense adjustment from National which had not been credited to Federal, was eliminated at the suggestion of Roberson that expenses be properly credited. We paid the major part of our expense from funds of Federal and periodically made adjustments between the two trusts on the basis of gross income.

In 1941 that amount was not computed in time to have Federal reimbursed by National and so it was carried as an account receivable by Federal. In the detailed schedules the item was dropped from income and the expense account was reduced by a corresponding amount.

The detailed schedules show total operating expenses of \$119,696.13, and the Final Report shows \$121,910.15. The difference is said \$2214.02. In the detailed schedules we eliminated this item as a receipt and correspondingly reduced the operating expenses.

I made that change at the suggestion of Mr. Roberson. After the change the net result is the same. On schedule 2-L of the detailed schedules the total second mortgage interest is shown as \$980. The sum of the second mortgage interest as shown on schedule 2-L is actually \$1080, but the \$100 indicated thereon as received from U. S. Bldg. Corp. was erroneously inserted since U. S. issued income bonds and no income was earned or paid. Thus, \$980 is correct.

300 Said schedule 2-L shows that the trust purchased bonds M-455 and M-442, and that they were exchanged for bonds M-443 and M-465, which latter bonds were subsequently sold to the sinking fund.

Ex. C attached to the Final Report of Federal reflects advances made to subsidiaries in the amount of \$4020. Schedule 3 of the detailed schedules shows the same amount as accounts receivable for advances to subsidiaries. The money was advanced when the companies were short of cash. Interest was paid on the advances generally at 4%. They were repaid to Darrow's successor.

Ex. C attached to the Final Report of National indicates total cash receipts of \$161,137.26, and the detailed schedules (p. 1) show \$163,202.26. The difference of \$2065

results from a variance in treatment of 3 bond transactions. Austin bonds were sold at a profit of \$15, and \$6000 of original inventory Ogden bonds and \$100 of original inventory Windsor bonds were sold to the sinking fund for \$1800 and \$250, respectively. In the Final Report those 3 items, totalling \$2065, were deducted from the cost of bonds shown in the disbursements on schedule C to show the net cost of bond purchases. In the detailed schedules that \$2065 is reflected as amount realized on original holdings of bonds sold to sinking funds and profit on bonds sold to others. The \$2065 appears on the first page of the detailed schedules.

In the Final Report that figure is reflected in the reduction in cost of bonds as shown under disbursements (Sch. C).

The treatment I gave this matter in the Final Report was probably for no reason except expediency to reduce the number of items to a minimum. In the detailed schedules, I set out the exact transactions. In one instance the \$2065 is shown as a receipt; in the other it is shown as a deduction from the disbursement for bonds.

I can point out the difference in treatment. In schedule 2 the cost of Austin bonds is shown as \$11,558.50 and on Ex. C as \$11,543.50, a difference of \$15. Schedule 2 shows the cost of Ogden Park bonds as \$1930, and Ex. C as \$130, a difference of \$1800.

301 Hearing before Special Master Archie H. Cohen
July 11, 1946

CLAIRE M. MARQUISS

(Examination by Mr. Herriott)

The final report in the case of National shows receipts of \$161,137.26 and the detailed schedules show total receipts of \$163,202.26. The difference of \$2,065.00 represents \$15 profit on bonds sold to others and the amount realized on bonds of original holdings which were not treated as cash receipts in the final report but as a deduction from bond purchases.

Schedule 2 of the detailed schedules pertaining to Ogden Park shows net cost of bonds purchased \$1930.00, and Exhibit C of the final report shows \$130.00 as cost of bonds purchased.

The \$1800.00 difference was the amount realized on \$6,000.00 of original inventory Ogden bonds sold to the sinking fund. In the final report the \$1800.0 was simply deducted from the cost of bonds purchased by Darrow, so that the net amount of cash paid out of the trust was \$130.00.

There were no other transactions of Darrow as trustee of Federal which were not fully reflected in the detailed schedules or the final report. Darrow as trustee purchased certain bonds of subsidiaries of both National and Federal through Colonial which bonds had been held by the First National Bank as collateral to a loan made to Jacob Kulp or Kulp & Company.

These bonds and the amounts paid therefor are reflected in the final reports and the detailed schedules. As far as I recall he paid approximately \$12,000.00 for these bonds. At the same time he also acquired from Colonial without payment of consideration, approximately \$84,000.00 par value of Federal bonds.

These bonds of the subsidiaries had been held by the First National Bank as collateral. There were a series of payments made to the bank and specific amounts of bonds were relinquished by the Bank from time to time as payments were made.

Darrow acquired the bonds at various times probably commencing about November 6, 1936. I don't recall, but, the money to buy these bonds may have come partially or maybe entirely from the Chairman Account.

302 At the time Darrow bought those bonds he also acquired \$84,000.00 of Federal Facilities Gold Notes, which were also included in the transaction. That \$84,000.00 of Federal bonds are not included in Darrow's final report nor in the detailed schedules. We didn't record those \$84,000.00 of bonds as having been purchased because the purchase transaction bought specifically the other bonds in the block.

So far as I know in addition to the securities shown in the final reports Darrow also acquired and presumably has, \$84,000.00 of Federal bonds.

(Mr. Herriott stated: these \$84,000.00 in bonds were not included in the account but are the subject matter of a supplemental affidavit filed by Darrow in November, 1943. Darrow still holds these bonds. He made an oral agreement with Colonial to hold them for the benefit of the certificate holders.)

In addition to the various items about which I have already been interrogated, Kulp & Company put into its bank accounts proceeds of loans made by Kulp & Company. During the period covered by S.E.C. Exh. 22, Kulp & Company made several loans the proceeds of which went into its bank accounts: Continental Bank, \$61,477.47; First National Bank, \$28,250.00; N. Y. Trust Company, \$43,891.45; Joseph Baumann, \$50,000; and Mrs. Kulp, \$5,240.08. This is as of June 30, 1933. Those figures are the balances as of that date made by Kulp & Company from those various sources. The loans were made prior to that date. The loans when made were credited to the bank accounts.

Cleveland station was not a subsidiary of Federal or National but it had a bond issue. The proceeds of rents collected for its Post Office property was put into the Kulp & Company bank accounts. Commercial Station was a similar property in St. Paul not owned by Federal or National. Its rents were also put into the Kulp & Company bank accounts.

I cannot tell by looking at S.E.C. Ex. 22 how much of a year end balances represent monies coming from the collections of rents from the subsidiaries. The funds were all co-mingled. During the period covered by S. E. C. Ex. 22 I would say that an estimate of \$150,000.00 as rent collected from Cleveland and Commercial Station would be conservative.

At the time Kulp & Company went into bankruptcy Cleveland was a creditor of Kulp & Company (\$79,233.26 at June 30, 1933) but I don't recall whether Commercial Station was a creditor.

303 Mosser sold bonds to the sinking funds of the subsidiaries from the inventory turned over to him by Darrow.

(A document prepared by Marquiss showing transactions in which Mosser sold bonds which had been acquired by Darrow was marked Respondent's Ex. 2 for id.)

Respondent's Ex. 2 accurately sets forth the amount which the securities cost Darrow and the amount at which they were sold by Mosser; except that some of the bonds may have been in the portfolio when Darrow took over.

I shall check this latter point.

When Darrow bought the books of Kulp & Company in the bankruptcy proceeding the cost was charged to expenses on the books of the trusts.

CLAIRE M. MARQUISS

(Examination by Mr. Courshon)

The books and records of the trusts of Federal reflected nothing regarding said \$84,000.00 of Federal bonds.

With respect to the loans that Kulp & Company made from various sources including banks I handled none of those loans myself nor did I receive the proceeds of those loans. I know that the money went into the bank accounts of Kulp & Company because I kept the records of the bank accounts.

I did not personally make the deposits nor direct the making of them. I was told that a certain amount of money was deposited in the accounts of Kulp & Company as the proceeds of certain loans. The books, which were kept by me, then showed a debit to the bank account and credit to notes payable.

I had satisfactory information that such loans had been made and the bank statement bore out the information that was given me. With regard to the two buildings not owned by Federal or National Kulp & Company had the same arrangement concerning collection of rents and operation of the properties.

Besides maintenance Kulp & Company disbursed money to service the bonds of these two buildings, that is, paying the interest, paying the bonds that might become due, or might be purchased for the sinking fund. So far as I know there was never any specific accounting made to the corporations as such by Kulp & Company. The records would show at any given date whether these buildings were debtors or creditors of Kulp & Company.

304 At June 30, 1933 Kulp & Company owed the Cleveland building about 79,000 odd dollars.

The monies collected by Kulp & Company from Cleveland and Commercial were mingled with funds of the other buildings and from time to time Kulp & Company made expenditures for Commercial and Cleveland out of the co-mingled funds. There may have been times where the money received by Kulp & Company from these two buildings was less than or equal to the money expended on their behalf.

CLAIRE M. MARQUISS

(Examination by Mr. Roberson)

Ex. C attached to the final account of National in the column headed "Cost" actually represents the gross disbursements paid out for bonds with the exception of Austin \$15.00, Ogden Park \$1,800.00, and Windsor Shore \$250.00.

CLAIRE M. MARQUISS

(Examination by Mr. Mulfinger)

I certainly knew about the transaction through which Darrow acquired that block of bonds from the First National through Colonial when it became necessary to issue checks.

The bonds were taken up piecemeal and checks were issued for specific bonds. I was told that the \$84,000.00 of Federal bonds came in free as part of the transaction. I did not make an entry on the books of the trust showing that these bonds had been received.

I do not know whether Darrow obtained an order of court for the purchase of these securities or to enter into any arrangement pertaining to the \$84,000.00 of Federal bonds.

I believe the \$84,000.00 of Federal bonds were kept in one of the boxes of the Trust. I never inquired of Darrow whether an entry should be made on the books of the Trusts pertaining to those bonds.

Nothing was said as to whether the \$84,000.00 of bonds should be reflected in Darrow's reports. With respect to the other securities in the block besides the \$84,000 of Federal bonds, I don't remember whether Darrow bought \$5000 of Quincy Second Mortgage bonds and \$5,000 of 22nd Street from Graham & Co. in Oct. 1935 and the balance from Houston & Co. in Nov. 1935.

305 My recollection is that Colonial handled the deal for the First National Bank. I remember that Darrow bought bonds from Graham & Company and Custin & Company but I don't remember that the purchase price was \$12,000 or any other amount.

CLAIRE M. MARQUISS

(Cross Examination by Mr. Herriott)

(A yellow memorandum sheet being a purchase memo of Colonial dated Nov. 6, 1936 describing miscellaneous securities having a price of \$2555 was marked Resp. Ex. 3 for id.)

Ex. 3 is in my handwriting but I don't know whether or not securities mentioned therein were some of the securities purchased by Darrow from the First National Bank through Colonial.

I do know that Darrow purchased bonds for \$12,000 from the First National Bank through Colonial or purchased from Colonial out of the First National Bank group of bonds held as collateral. They were paid for in several installments because we didn't have enough money.

CLAIRE M. MARQUISS

(Examination by Mr. Roberson)

Resp. Ex. 3 for id. is a purchase memo of Colonial. I know it was the form they used although the name Colonial does not appear. It records a purchase of the securities by Colonial from the First National bank. Colonial, not Darrow, made the purchase from the bank.

CLAIRE M. MARQUISS

(Examination by Mr. Mulfinger)

The memorandum showing the purchase by Darrow from Colonial would not reflect the \$34,000 of Federal bonds. I was told that Darrow was going to obtain those bonds upon the consummation of the transaction. There should be some sort of paper indicating the transfer of the securities from Colonial to Darrow.

CLAIRE M. MARQUISS

(Examination by Mr. Courshon)

I was not an employee of Colonial.
306 I don't know why the securities were purchased from the bank by Colonial rather than by Darrow.

The securities were paid for out of funds of the Trusts, not out of Darrow's personal funds.

CLAIRE M. MARQUISS

(Cross examination by Mr. Herriott)

Part of the \$12,000 purchase price may have come from the Chairman Account. It could have been that Resp. Ex. 3 for id. was made out at the time because Darrow coincidental with the making of the memo was paying over the \$2555 to Colonial.

CLAIRE M. MARQUISS

(Examination by Mr. Courshon)

I believe the checks of Darrow were made payable to Colonial.

CLAIRE M. MARQUISS

(Examination by Mr. Mulfinger)

Between 1936 and 1943 I might have made out memoranda for Colonial in similar transactions.

I worked on its books to some extent, but not very much.

MYRTLE JOHNSON

(Cross Examination by Mr. Herriott)

While I was working for Kulp & Co. I received \$500 a month and various bonuses. I entered its employ at the time of its incorporation in 1921 and continued until it ceased doing business.

I started at \$300 a month which was increased to \$500 about two years later and so continued until about July 1933 when Andresen took over operation of the properties. I then entered Andresen's employ.

I assisted Andresen in connection with the operation of the properties, servicing bonds, assisting in the reorganization of subsidiaries and other activities which took up possibly half of my time. Andresen relied on my suggestions in regard to Grand Rapids reorganization and 307 they were complied with and followed. I worked with the committee all through the hearings.

For the first two months Andresen paid me \$200 per month and thereafter \$250 per month.

I was to devote part of my time to his business and work in my activities for Colonial or any other activities I might have. Colonial had been in existence about 2½ years when I entered the employ of Andresen. We occupied joint offices. It was one large suite and certain offices were designated for Colonial and certain ones for the two Trusts.

There was a division of office expense. Before Andresen took over I was working for Kulp & Company and also for Colonial. All of the stock of Colonial was owned by Kulp, Mrs. Kulp and myself. So far as office space was concerned Kulp & Company and Colonial were all in one.

I handled all of the executive work for Colonial. I also contacted buyers and sellers of securities. I performed any type of service for Colonial until Kulp & Company ceased doing business. Then I continued in the same fashion after I was employed by Andresen.

Colonial was engaged in the business of purchasing and selling securities and handled other securities besides those of the 27 subsidiaries. We handled listed and unlisted bonds and stocks of all types and certificates of beneficial interest and partial payment contracts sold by Colonial Bond & Share Company of Baltimore, from whom Colonial derived its name. We also handled securities of the two Trusts and their subsidiaries and of other companies whose securities were underwritten by Kulp & Company.

I cannot say what percentage of the securities business handled by Colonial involved transactions in the securities of subsidiaries of the Trusts from the organization of Colonial to Darrow's appointment. Colonial had about 7 or 8 employees originally excluding Jacob, Lee Kulp and myself but that number was reduced to about 3 in 1940.

While I was working for Andresen Colonial carried on its securities business. It bought and sold securities of the subsidiaries. We sold securities of the subsidiaries of the two top Trusts to various of the subsidiaries but not to Andresen personally. I was employed by Darrow immediately after he was appointed trustee. I never met Darrow prior to that time.

308 After Darrow came in he said he did not want to make any changes in the organization whatsoever un-

til he found out whether or not the arrangements were satisfactory.

I told him I was willing to cooperate and assist in working out the problems in connection with the properties but I reserved the right to carry on my activities in the securities business.

Darrow said he had no objection to my doing so. I made the statement because I didn't want any question raised about my activities in connection with the sale of securities and purchase and sale of other than the Trust securities.

I wanted the opportunity of dealing in every type of security whether connected with the Trusts, their subsidiaries or other companies. I told him that if I spent about half a day on his work that would be sufficient. This arrangement was satisfactory to him. He was to pay me \$250 a month for that service. I received \$250 a month up to 1942 and then \$275 a month.

That is the most I ever received from him. I never received anything else in the way of compensation from Darrow. After I was employed by Darrow I continued to work for Colonial.

The stenographer and the messenger employed by Colonial assisted in the work of the Trusts. Many notices had to be sent out when Darrow first came in and Colonial's stenographer did a great deal of work in that connection.

The pay of the stenographer and messenger was not divided. However, some of Darrow's help did some work for Colonial and we felt that one sort of balanced the other. After I entered the employ of Darrow I bought and sold through Colonial securities of the subsidiaries and of the Trusts. We sold them to Darrow and others.

While I was employed by Darrow, Colonial traded in securities other than those of the Trusts and their subsidiaries. I believe Colonial made its first sale of securities of the subsidiaries to Darrow in about the fall of 1935 when I think he bought some securities in the Chairman Account. From time to time we continued to sell securities of the subsidiaries to Darrow; up until some time in 1941.

Darrow always determined the price he would pay and sometimes he would discuss with me the question of a fair-

price. In some cases we sold securities to Darrow at prices above what Colonial had paid for them; in other cases at the same price and in still other cases at less than Colonial had paid.

309 Darrow determined the price and there was never any question about it. Before determining the price he sometimes conferred with Trust committees, even where he had full jurisdiction and in other cases he conferred with Trust committees or Board of Directors who determined what the prices were. Darrow determined the price when he paid to Colonial exactly what it had paid or when he paid less.

In some cases Darrow did not purchase securities which we offered to him for lack of funds and I would find a buyer elsewhere.

From the time Darrow became trustee in 1935 until Colonial ceased business in 1940, it had about 6000 transactions and 800 involved sales to anyone of securities of the two top Trusts or their subsidiaries. I don't know how many of these 800 were with Darrow.

The other 5200 transactions involved all types of bonds, stocks and certificates of beneficial interest. Colonial had a regular clientele of purchasers and it maintained contact with them. Colonial's salesmen worked on a commission basis but had drawing accounts.

The salesmen were allowed 2/3rds of the gross profit and in some cases they received additional compensation. The regular rate was 2/3rds.

310 Hearing Before Special Master Archie H. Cohen
July 15, 1946

CLAIRE M. MARQUISS

(Direct examination by Mr. Herriott)

At the last hearing I was interrogated about Resp. Ex. 2 for id. which is a statement of the bonds sold to the sinking fund by Mosser.

(A document which elaborates upon Resp. Ex. 2 for id. including bond numbers and purchase dates was marked Resp. Ex. 2-A for id.)

I obtained the information shown on those exhibits from the records of the interested organizations. The left hand column of Resp. Ex. 2 which exhibit is entitled "Bonds

Sold by Mosser to Sinking Fund" contains the list of bonds sold by Mosser from the Chairman Account. On the right hand side of the sheet there are 3 columns.

The first of those columns indicates the par value of the bonds; the next shows the cost to the seller; and the last shows the amount received by Mosser for the bonds.

(Mr. Mulfinger objected to this line of testimony on the ground it was not cross examination and it was received subject to objection.)

Resp. Ex. 2-A contains everything shown in Resp. Ex. 2, plus the dates the bonds were purchased and their numbers.

Resp. Ex. 2-A shows some second mortgage bonds of Postal purchased during Andresen's regime. One entry "Bought from Andresen" means it came to Darrow from Andresen.

With the exception of four bonds having a face amount of \$3,000 and being second mortgage bonds of Postal, all of the bonds shown on Resp. Ex. 2-A were purchased by Darrow through the Chairman Account, Federal or National. I prepared these exhibits from the books of the trustee and they are correct.

(Mr. Herriott agreed, after repetition of objections by Mr. Mulfinger, that Mr. Marquiss would be considered his first witness in chief and that the present examination is not cross examination but direct examination just as though the objectors had not closed their case and Mr. Herriott had been allowed to call Marquiss as a witness out of place).

311 (A memorandum prepared from the books of Federal and National by Marquiss regarding the purchase of \$12,000 of sundry bonds by Darrow from Colonial was marked Resp. Ex. 4, for id. as of 7/15/46).

Said bonds were held by the First National Bank as collateral for a note of Jacob Kulp & Company. Said exhibit shows a total of \$31,000 par value of bonds of the subsidiaries.

(It was stipulated that the exhibit might be corrected to show the true total of \$33,000 in lieu of \$31,000.)

In the left hand column at the top of said exhibit appears the five dates upon which the Chairman Account issued its checks to Colonial for the \$33,000 in bonds. All of the checks for this purpose were drawn on the Chairman Account. The right hand column at the top of said exhibit indicates the amounts of the various checks.

Resp. Ex. 3 for id. covers the same transactions as shown on Resp. Ex. 4. The amounts of the five checks shown in the right hand column at the top of Ex. 4 total \$12,000 and represent the amounts paid by Colonial. The remainder of Resp. Ex. 4 shows the details of the bonds that were received for the \$12,000 except the bond numbers because I did not have the records from which to obtain them.

The Ogden Park Bond shown to have been sold by Mosser on Resp. Ex. 2-A is not a part of the \$3,000 par value Ogden Park bonds shown on Resp. Ex. 4. According to Resp. Ex. 2-A Darrow bought a \$500 Ogden Park bond for \$155 on 3/25/38 and it was later sold by Mosser for \$250.

In Resp. Ex. 4 the column headed "Disposition" indicates the company to whom the various bonds were sold and the column headed "Price" shows the price received from such company. The word "retained" when used in the column marked "Disposition" means the bonds were not disposed of by the Chairman Account, they might have been disposed of by Mosser or he might still be holding them. Except as to the bonds marked "retained" all of the bonds purchased from the bank for \$12,000 were immediately disposed of by the Chairman Account to the places indicated under "disposition".

Darrow paid for the bonds out of the Chairman Account. At the bottom of Resp. ex. 4 appears "\$84,000 Fed. Fac. received considered as no cost". That is inserted because Darrow considered that he paid \$12,000 for the first mortgage bonds listed on Resp. ex. 4 and that the Fed. Facility bonds came in without any payment.

312 I have no records which show anything on the transaction between Colonial and the First National Bank or what the price was. Resp. Ex. 3 for id. prepared on form of Colonial reflects the first transaction which appears on Resp. Ex. 4 where \$2555 was paid for a lot of miscellaneous securities.

(A memorandum bearing the printed name of Colonial on the top, dated Nov. 10, 1936 and involving the same amount (\$2555) as set forth on Resp. Ex. 3 was marked Resp. Ex. 3-A for id.)

CLAIRE M. MARQUISS

(Cross Examination by Mr. Roberson)

No one instructed me to use the heading "Prices set by Mr. Darrow" in Resp. Ex. 4. I know that the prices were set by Mr. Darrow because he told me those were the values he assigned to the bonds he received. "Prices Set by Mr. Darrow" means that these cost prices in Mr. Darrow's opinion were the values of the securities purchased.

I have been unable to find any memoranda showing the transactions between Colonial and Darrow.

Where the word "retained" is used in Resp. Ex. 4, it means that those bonds were retained in the Chairman Account after the entire transaction was consummated. They may have subsequently been disposed of. The securities purchased for \$12,000 did not come in one block but were received piecemeal in accordance with the payments. I don't know whether Colonial paid the bank in piecemeal fashion.

I made out Resp. Ex. 3 on or about the date it bears.

Resp. Ex. 4 does not show the date that Darrow paid the cost price opposite each of the securities. The dates in the extreme right hand column of Resp. Ex. 4 are the dates on which the bonds were disposed of to the unit indicated under "Disposition." The dates shown on Resp. Ex. 4 under "Checks issued" are the dates the checks were issued to make up the \$12,000 purchase price for the bonds. I don't know whether Darrow's checks were transferred to the bank or whether Colonial issued its own check to the bank.

CLAIRE M. MARQUISS

(Cross Examination by Mr. Mulfinger)

313 At the time these bonds were purchased by Colonial

I don't know whether the bank held any other bonds of the subsidiaries. When Kulp & Co. went into bankruptcy I did not know that the First National Bank had bonds of the subsidiaries in the par amount of \$124,000.

MYRTLE JOHNSON

(Direct Examination by Mr. Herriott)

(Agreement between the First National Bank and Colonial dated Nov. 5, 1936 was marked Resp. Ex. 5 as of 7/15/46.)

This agreement sets forth that the bank agrees to sell and Colonial to purchase certain securities therein set forth together with a note of Kulp & Company.

(Resp. Ex. 5 was received in evidence.)

One of the securities enumerated in Resp. Ex. 5 not acquired by Darrow is the note of Kulp & Company dated November 24, 1933 in the amount of \$27,300. That was the note for which the securities listed in the contract were held as collateral by the bank. The other item in Resp. Ex. 5 not delivered to Darrow was the non-negotiable receipt of the National City Bank of Cleveland, depository, in the reorganization of U. S. Parcel Post Building Company, which receipt had a value of \$70.

Colonial did not acquire all of the securities on Resp. Ex. 5 at one time.

(Five checks of Colonial to the First National Bank of Chicago were marked Resp. Ex. 6, 6-A, B, C, D, for id.)

Resp. Ex. 6 is a check of \$2555 by Colonial to the bank in part payment for the securities in question. I do not know which securities were received for that check.

The contract states that there were to be payments of \$2500 over a period of 5 months. A memorandum prepared by Mr. Marquiss indicates that the \$2555 shown on Resp. Ex. 3 purchased \$4000 Division and LaVergne bonds, \$1000 Armour Station, \$2000 Villa Garage, \$3500 St. Louis 2nd and \$1000 Rogers Park.

I am not sure that those particular bonds were acquired by the payment of \$2550 but the bank files will show the receipts for the securities delivered on each date. The checks marked Resp. Ex. 6 to 6-D total \$12,000.

314 After adding the amount of the checks I find they total \$12,070. Referring to the item of \$2550 on Resp. Ex. 4, I find that the records of Colonial show that Darrow paid the \$2500 and \$55 in two checks.

The second item on Resp. Ex. 4, shows a check to Colonial of \$2750 on Dec. 4, 1936. On Dec. 31, 1936 Colonial issued a check of \$3075 to the bank but the books show

that we received \$2960 from Darrow as per Resp. Ex. 4. On February 5, 1937, Colonial issued a check to the bank for \$1750 and we received a check from Darrow for \$1935. The reason for the difference is that the payment made by Darrow on Dec. 31 was insufficient to cover the amount we paid to the bank on that date.

Darrow's latter check balanced the account up to that time. On March 5, 1937 Resp. Ex. 4, shows a check of \$1800 by Darrow to Colonial.

Resp. Ex. 6-D is a check by Colonial to the bank on March 5, 1937 for \$1870. The total of the checks drawn by Colonial to the bank is \$12,070.

On computing the items again I find that the checks marked Resp. Ex. 6 to 6-D total \$12,000 and the payments by Darrow to Colonial also total \$12,000. Of the securities secured from the bank, there was \$70 paid for securities of U. S. Parcel Post Building at Cleveland which he did not get.

Darrow received all of the other securities from the bank except the Trust receipt of Cleveland (U. S. Parcel Post) and the note of Kulp & Company.

I either have the Trust receipt or the bonds for which it may have been exchanged. Colonial still holds those bonds. Cleveland was later reorganized. The value of \$70 was placed on the Trust receipt by agreement between Kulp, the bank and myself.

We had no written contract with Darrow for the purchase of the securities received from the bank. At first Colonial intended to sell these securities at retail.

We told Darrow we were negotiating for the purchase of these securities and could sell them at an advanced price. Kulp did not want them sold but was interested in acquiring them to protect the holders of certificates of beneficial interest of Federal. That block of stock together with the block held by Hawley under a certificate of trust would about equal the amount held by the public.

315 There were about \$365,000 or \$375,000 of Federal outstanding. Darrow wished to acquire the securities but did not have the funds and I said that I could work out a deal to take them at various times. I gave him the \$84,000 of Federal at the time I received them from the bank. It was the understanding that we were to hold them for the holders of Certificates of beneficial interest of Federal.

No effort was made to sell them and they are kept by Darrow in his safety deposit box. Darrow made no payment to Colonial for the \$84,000 of bonds of Federal. As to the price paid to the bank we were guided by the market price. In fact they were acquired at a considerably lesser price than we figured the market price was.

It is my opinion that the price paid to the First National Bank was less than the market price.

Today they are worth considerably more than \$12,000, the bonds which Darrow acquired from the bank are worth about \$20,000.

The \$84,000 of federal bonds delivered to Darrow would be worth about 20¢ on the dollar today and could be readily marketed at that figure. Upon the completion of the reorganization, I think they will be worth par.

There is a connection between Resp. Ex. 3 and 3-A. The records of Colonial show that confirmation No. 11306 (Resp. Ex. 3-A) was tied up with the payment to the bank covering bonds delivered to Darrow for \$2555. Resp. Ex. 6 represents that payment.

I looked but did not find any other confirmation slips covering the sale of securities acquired through Colonial by Darrow from the bank.

MYRTLE JOHNSON

(Cross Examination by Mr. Herriott)

While I was employed by Andresen my duties included working on plans of the subsidiaries—Station D, Ferry Station, Armour Station, Grand Rapids, Ogden Park, and Park View Manor.

Before Darrow's appointment these reorganizations had proceeded pretty far but with the possible exception of Grand Rapids they were all completed after he came into office. There were a number of subsidiaries reorganized after Darrow came into office.

I was very active in the reorganization while in the employ of Andresen. As to Austin, Station D—Ogden Park, I believe I was the only witness for the corporation and I wrote the letters that were sent out to holders of securities. I conferred with various attorneys, worked 316 on the plans, and the general work in connection with the reorganization. We had many meetings with the security holders.

When Darrow became trustee I continued along the same line in connection with Park View. I was familiar with the capital structures of the subsidiaries. The bondholders felt that the owners of the equity were not entitled to consideration in the plan for Station D.

Darrow and I carried on negotiations with the holders of securities of Station D. We got 10% of the stock. Station D has been reorganized and has no outstanding bonds.

The bondholders received one share of stock for each \$100 bond. Federal received approximately 10% of the stock. The property of Station D at that time was worth about \$30,000.

I understand it could be sold today for between \$50,000 and \$60,000. There are some special assessments which would have to be charged against the sale price. The company received about 120 shares of stock. I know of some stock which recently sold for \$10 a share.

In the case of Chicago Post Office the bondholders received new bonds par for par.

Federal retained the entire equity. Federal also retained the equity in Dallas and the bonds were extended with interest at 3%.

Another reorganization was Ferry Station. The bondholders committee proposed a plan under which no consideration was to be given the equity.

I sat in on the negotiations which resulted in the plan that was finally adopted. Under this plan the capital stock was retained by Federal and the bondholders received new bonds on the basis of par for par.

The general creditors were to remain until the first and second mortgage were retired and the property was to remain under a trust committee with a payment of 5% to whomsoever the committee designated as management fee. On account of the management fee we have collected \$32,000 since that time. This was collected by Federal. The first mortgage has been reduced (from \$665,300) to \$125,000.

I participated in working out that plan. When Ferry Station was erected we received a rental of \$107,000 from the government. At the time of the reorganization we were getting about \$60,000 from the government, the lease having expired several years previously.

317 A bondholder named Toy insisted that there was no equity beyond the bonds. Either Darrow or I finally convinced him to change his position.

In the case of Ferry Station the first mortgage bondholders were to receive \$38.10 in back interest and the second mortgage bondholders \$50.53.

The second mortgage bondholders were to receive no further interest until the first mortgage was reduced to \$325,000. The rental was about \$60,000 at that time. The second mortgage bondholders began receiving interest on Dec. 31, 1942. The Post Office vacated the building about 1939 and Kulp leased it to a cotton storage warehouse at about \$19,500 a year.

The lease could be cancelled upon 90 days notice by paying a bonus of \$15,000. About Dec. 1941 Kulp was informed that the government wanted the building for navy purposes. Kulp made arrangements for considerable alterations for the navy to the extent of \$50,000 to be paid by the corporation. Under a five year lease the government was to pay \$90,000 the first year, \$85,000 the second, \$80,000 the third, \$75,000 the 4th and \$70,000 the 5th year. The tenant was paid \$10,000 to vacate, Kulp inducing them to accept that sum in lieu of \$15,000. Kulp went to San Francisco and stayed there 60 days and the government moved in on February 2, 1942.

They continued paying the rent until June 30, 1946. I understand from Mosser that the government has moved out and he has possession. I hold \$19,500 of Ferry Station securities in a trust capacity and have held them for 20 years.

Some people in California own the securities but the ultimate beneficiaries under the trust will be Northwestern University.

318 Hearings before Special Master Archie H. Cohen
Sept. 18, 1946

(Mr. Herriott stated that when he learned about the \$84,000 of Federal bonds which Darrow had acquired from the First National Bank, he advised Darrow that they should be transferred to the estate. Mr. Mulfinger agreed that they had been turned over to Mr. Mosser.)

MYRTLE JOHNSON

(Cross Examination by Mr. Herriott)

At the time the lease on the Ferry property in San Francisco was arranged with the Navy Department, financing was required.

The corporation needed about \$40,000 for the alterations requested by the Navy but the corporation did not have the funds.

The Northern Trust Company refused a loan to Darrow.

Darrow told Kulp that any financing would have to be effected in California. He arranged with McDonald and Kahn who had constructed the building to make the alterations and allow us to pay them from the rentals of the building. After awhile McDonald and Kahn asked us to make a payment, if possible, and since we had a good lease the Northern Trust Company made a loan to cover the balance due McDonald and Kahn.

This amounted to about \$15,000 or \$18,000; the bank was paid in due course. Beside participating in the reorganization of the subsidiaries of Federal already mentioned, I also helped with Irving Park, McKinley Park, North Halsted, Quincy Station, Roseland Building, United States Building Corporation of St. Louis; South Side Post Office, Twenty-Second Street Station and Villa Building. In the National group, I participated in the reorganization of Armour Station, Berwyn, Division and Laverne Building, Postal Facilities and Los Angeles. I took part in either the preparation of the plans or in bringing about the formation and acceptance of the plans.

(Mr. Mulfinger objected to the entire line of questions which follows and the Master reserved his ruling on its admissibility.)

In the case of Irving Park the attorney for bondholders owning \$16,000 of \$47,000 in first mortgage bonds contended that the debtor had no equity. He proposed to give the first mortgage bondholders control, allow a small interest to the second mortgage and eliminate the stock. One of the objecting bondholders named Levinson had acquired his bonds through a niece of Kulp and through her I met with Levinson and his attorney. Levinson stated that he did not wish to hurt anyone in the picture if his principal was satisfied.

319 We worked out the plan which paid 3% on the first mortgage bonds, 1% on the second and all additional earnings were to be used to retire bonds. Federal retained all of the stock. Mr. Williamson, in collaboration with the other attorney, prepared the plan. We mimeographed it in our office and got it out.

In connection with plans, it was frequently necessary for me to contact security holders to obtain their approval. I was personally acquainted with a great many of the shareholders. We effected an extension of the North Halsted bonds without court proceedings at 3% interest. All but \$1500 of the bonds were thus extended for fifteen years. That was done by my calling people up.

I knew many of these people. I told Darrow I thought we could procure an extension without a court proceedings. Federal held all the stock of North Halsted and continued to own it after the extension. That company has never been reorganized in court and the attendant expense of a court reorganization was saved.

Quincy Station required much negotiation and many conferences and I was present at most of them. The original issue was sold to P. W. Chapman. Besides ourselves, two bondholders' committees were interested and each submitted a plan. The St. Louis Committee's plan was similar to ours and called for 3% interest.

New York and Chicago committee contemplated 5% interest and the elimination of the stock of Federal entirely. They wanted the stock operated by voting trustees under the management of the first mortgage bondholders. The plan finally agreed upon by all parties permitted the corporation to operate the property. The stock was put in escrow with voting trustees until thirty days before the expiration of the bond issue, the trustees to have supervision of operations.

Thus subject to the plan Federal retained its stock interest.

I attended practically all the meetings of the various groups.

I entered into the general discussions relating to the buildings.

I argued that the local people who constructed, leased and obtained a non-cancellable lease for the building be given consideration. If the lease had not been changed to a non-cancellable one, the government probably would

have been out of the building. The lease then had 320 about six years to run at approximately \$125,000 per annum. I did not contact many of the first mortgage bondholders because the bonds were distributed by P. W. Chapman. The second mortgage bonds were distributed by Kulp & Co.

I knew all of the bondholders and when we failed to obtain the required $\frac{2}{3}$ consents I had to call people on the telephone to obtain consents. Darrow and I discussed each plan in detail and considered the type of building, past earnings, and future possibilities. I believe Darrow attended every meeting with the various groups and he requested me to assist him in the discussions at such meetings as well as in obtaining consents to the plan.

The balance of the plans in Federal followed the same pattern. The particular work I did was in obtaining consents. The holders of the bonds were lackadaisical and in many instances we telephoned or wrote letters asking the security holders to send in their consents. That required my special work because I knew many to whom we wrote. In the case of National, nine subsidiaries were re-organized.

Four had been started before Darrow came in and I believe one had been completed prior to his appointment. That was Grand Rapids, Ogden Park, Austin and Station D had also been previously started. In the case of Ogden and Austin, I was the one who appeared before the Referee. Ogden, Station D and Austin followed the same general pattern as that adopted in the Federal group. In connection with those it was a matter of getting consents as there was no objection except in the case of Berwyn where a revision of the plan was requested by an attorney-bondholder. I appeared before the Referee in that matter and testified to financial data.

That testimony on the plan was gathered by me and it was my knowledge of the properties gained through the years prior to Darrow's appointment which made it possible for me to testify. The last property I will refer to is Postal, the bonds had been distributed by P. W. Chapman and were substantially held in the East. An attorney from New York said there was a plan worked out under which the first mortgage bondholders would receive stock and no recognition would be had by general creditors nor the owner of the equity.

This attorney left with the impression that they were going to take the property away from us. Darrow talked to the Chicago office of P. W. Chapman. Thereafter another attorney from the New York office came out and we finally agreed upon the plan now in operation. I assisted Darrow in working out that agreement. There was \$190,000 in second mortgage bonds outstanding, all distributed by Kulp & Co.; and \$495,000 of first mortgage bonds.

321 National held about \$84,000 of seconds and I succeeded in obtaining consents from the holders of the balance by contacting the people, many of whom I knew. Under the plan National retained its stock ownership and a first mortgage trust committee was appointed. For the assistance I gave Darrow, I never received anything other than my salary.

I never received any compensation from the subsidiaries for such work. There are two other companies I should like to mention, one of which is LaGrange. No reorganization of that subsidiary has been worked out. The property has been vacant a great deal of the time. I have had a number of calls from bondholders and have advised everyone not to start foreclosing. The other property is Los Angeles.

Mr. Craigin, a large bondholder, indicated that there was no possibility of the owners retaining any of the equity under the plan which he proposed to put through and that the only ones to be considered were the first mortgage bondholders. The Masonic Charitable Organization of Iowa has received \$26,000 in first mortgage bonds through Mrs. Blair, a Florida friend of mine and they were also represented.

During a meeting with Mr. Westfall who represented the Masons, I said that if there was some consideration given the Trust it would benefit his client, Mrs. Blair. The plan was worked out whereby the bonds were cut in half and the bondholders received voting trust certificates representing in and about 75% of the new stock. The trust received about 25% of the entire stock that was issued. I had been in touch with Mrs. Blair, I spoke to her and wrote her letters. However, I don't believe I called her but worked with Mr. Westfall entirely. In the plans pertaining to National subsidiaries, I worked and conferred with Mr. Darrow in all cases except Grand Rapids, Ogden

Park, Austin and Park View Manor. In the latter case the plans were practically completed when Darrow came in. However, Darrow participated in every detail concerning all the work on plans which took place after his appointment. We discussed financial data of the subsidiaries, their past history and future possibilities.

I advised him on the various matters as far as I could. I have been familiar with the market value of securities of the subsidiaries from 1921 to date.

The total cost of securities of Federal purchased by Darrow and retained by him to the time of his resignation was \$31,864.55. I know what bonds he purchased. The market value of those bonds was the price he paid.

322 According to Darrow's final report, those bonds were worth \$38,321.50 at the date of his resignation.

That would fairly represent the market value at that time. However, if the bonds were sold at that time through a retail organization, a price could have been obtained above the \$31,864.50.

I stated in a letter to Mr. Roberson dated in October, 1945 that the market value of securities was then \$80,-885.

There were some second mortgage bonds having a face value of \$5500 which cost him \$550 but at the time of his resignation the corporation was paying 6 which brought the value down to \$330.

That is the only group which is worth less than he paid for it. In my opinion the bonds were bought at a very low price. The voting trustees set a price of \$6.75 for bonds presented to the sinking fund. That was arrived at by taking the balance of the sinking fund and spreading the amount over all of the second mortgage bonds. I believe there was interest paid on those bonds.

I am speaking of second mortgage bonds of Quincy Station. Darrow acquired a total of \$18,600 second mortgage bonds of Quincy for \$2667.50 of which \$13,100 was sold for \$4,435, which resulted in a profit of \$2,317.50 to the Trust on the total cost.

On this block \$4,258.34 in interest was collected.

(The Master stated that the \$6.73 which the voting trustees would pay for said bonds was not the market value but an arbitrary figure predicated on the amount

they had in the treasury spread over the outstanding bonds.)

The market value would be a little higher than that.

323 Hearing before Special Master Archie H. Cohen
Sept. 25, 1946

MYRTLE JOHNSON

(Cross Examination by Mr. Herriott)

The market value of the securities purchased by Darrow for \$31,864.50 and retained by him is \$87,100 as of today. In the case of National, according to the final report, various securities of the subsidiaries which Darrow purchased retained and then delivered to Mosser cost him \$47,469.25.

(Mr. Mulfinger objected to the line of questioning and the Master reserved a ruling on the point.)

The details are shown in Exhibit B of the Final Report in National.

The total block of bonds was worth more at that time than he paid for them. No individual bond cost him more than the market value.

The market value on August 13, 1943 of those bonds was \$56,635.

On Oct. 11, 1945 those securities of National had a value of \$75,294 that includes a block of bonds which Mosser sold to the sinking fund of Postal so that the bonds were not all owned on Oct. 11, 1945.

He sold \$15,500 in first mortgage bonds of Station F at a price of 75.

Mr. Darrow had purchased \$21,500 of that issue so that after Mosser sold, there remained \$6000 in those bonds. That \$6000 in bonds today has a market value of \$4800 or \$80 per 100. When Mosser sold the bonds to the sinking fund at 75, that was the first time the company had paid over 70.

Darrow paid \$11,093.75 for the entire block which figures at a little better than 41½ per 100. The market value today of all the bonds in National which Darrow purchased at a cost of \$47,469.25, would be \$77,179.

The interest collected on this Federal group of bonds was \$21,412.81. As I previously testified the total interest collected on the Federal block of bonds retained by Darrow was \$24,494.34.

324 The total interest collected on the \$18,300 par value of Quincy second mortgage bonds purchased by Darrow was \$4,258.34. As I previously said \$5500 in par value of those bonds were valued as of today by the Voting Trustees of Quincy at less than Darrow's purchase price of 10¢ on the dollar. On that \$5500 in bonds which the Voting Trustees valued at 6, \$1966.25 in interest was collected.

The Voting Trustees presently value those bonds at \$220 less than Darrow paid for them but I do not think that \$330 represents their market value. I believe they have a value of at least 25¢ on the dollar.

The price of 6 was set on the bonds by the Voting Trustees several years ago while Darrow was trustee.

In 1937 they had placed a value of 35 on the bonds which remained in effect up to June 30, 1938 when the price was changed to \$30 per \$100. When the earnings showed no funds available for second mortgage interest and no funds for first mortgage retirement, the board decided it would take the unexpended funds in the second mortgage sinking fund and pro rate it over all the second mortgage bonds. Thus the figure of 6 plus was arrived at. The actual market value was not taken into consideration. In 1939 the price was reduced to \$30 for the second mortgage bonds sinking fund.

The entire block of \$18,300 par except the \$5500 still held by the trustee were sold to the sinking fund for \$4,435 which is an average of about 32½.

In the block of securities bought by Darrow in both Federal and National and held by him until he resigned were included some of the securities which Darrow purchased from me and which I had acquired through the Seligman case. Darrow paid me \$12,447.55 for these Seligman securities which I purchased. Their market value at that time was \$20,120. I have included those bonds in giving my testimony regarding securities which Darrow purchased and which he retained until his resignation.

The market value of those securities purchased by Darrow for \$12,447.55 today is \$31,195.

(A statement of the securities purchased by Colonial and sold to National or its subsidiaries at cost to Colonial was marked Resp. Ex. 7 for id. A statement representing purchases by Colonial and resold to National or the sub-

sidiaries where the selling price was less than the cost was marked Resp. Ex. 8 for id. A statement showing securities purchased by Colonial and resold to Federal or its subsidiaries at cost was marked Resp. Ex. 9 for id. A statement showing securities purchased by Colonial and resold to National or its subsidiaries where the selling price was less than the cost was marked Resp. Exh. 10 for id.)

325 These exhibits show the cost to Colonial and selling price to Darrow or the subsidiaries. The information for these exhibits was taken from the books and records of Colonial and verified by photostatic copies of records made by the S. E. C. When I first prepared Data for the objectors showing transactions between Colonial and Darrow, I included this information.

Exhibit 8 contains one transaction where Jacob Kulp bought some securities of Ogden Park and sold them to Ogden Park. I prepared these exhibits and they are true and correct.

(A statement representing a tabulation of the commissions earned and paid to Robinson by Colonial as salesman's commissions on the underlying securities of National was marked Resp. Exh. 11 for id. A similar tabulation pertaining to Federal was marked Resp. Exh. 12 for id.)

I prepared Exh. 11 and obtained the information from the records of Colonial's commission account.

The information on Exh. 11 is true and correct. I obtained the information for Exh. 12 from the same source and the dates and figures are true and correct.

There were no transactions between me and Darrow in which I sold to him securities at cost to me or less than cost. Neither Colonial nor I ever paid Darrow any money or compensation.

Mr. Darrow did not to my knowledge participate in any of the transactions whereby he purchased securities from Colonial or me except as the purchaser.

MYRTLE JOHNSON

(Redirect Examination by Mr. Roberson)

Resp. Exh. 11 and 12 will tie up with the names on the exhibits showing the transactions where there is a profit.

I don't believe that the transactions set forth in Resp.

Exh. 11 and 12 are reflected in Resp. Exh. 7, 8, 9 and 10 because Exhs. 11 and 12 refer to cases where a profit was made.

I gave Mr. Darrow the benefit of my knowledge of the operation of these subsidiaries and the formation of the plans. My salary started at \$250 a month and later was changed to \$275.

326 Darrow never agreed to give me anything in addition to my salary for my services in the formation of the plans. National has outstanding 46,636½ shares. I filed a claim on behalf of Joseph Baumann, Jacob Kulp and myself for 10,761.6 shares. I filed another claim for about 1300 shares as executrix of the estate of Alice M. Powell.

I acquired the interests in National upon which I filed claims from Michael Tauber & Co. through the Seligman case. This 10,761.6 shares were a part of group 2 in the Seligman sale. Mr. Baumann's interest will be to the extent of repaying him the amount of his loan with interest as well as the indebtedness to his wife.

After these claims are satisfied Kulp and I will share the proceeds equally. The principal amount of the loan from Joseph Baumann is \$50,000 with interest since 1933. The amount owed Mrs. Baumann is approximately \$75,000 plus accrued interest since about 1931 or 1932. These loans were scheduled in the Joseph Kulp & Co. bankruptcy.

As far as I recollect Joseph Baumann and Mrs. Baumann filed a claim against Kulp & Co. in the bankruptcy case. The \$50,000 claim of Joseph Baumann represents an unpaid balance of a loan of \$90,000 made to Kulp & Co. and guaranteed by Jacob Kulp about 1930 or 1931. The loan of Mrs. Baumann consisted of marketable securities and a block of bonds of the companies underwritten by Kulp & Co.

She turned them over to Jacob Kulp and he pledged them as collateral with the New York Trust Company. They had a market value of about \$78,000. Thus Kulp borrowed close to \$170,000 from Mr. and Mrs. Baumann at that time.

The securities of Mrs. Baumann included 400 shares of General Electric stock, 200 shares of Electric Bond and Share and a number of miscellaneous bonds of Jacob Kulp and the companies underlying the Trust. These securities and others were pledged as collateral by Kulp & Co. for a loan with the New York Trust Company. I do not re-

member the amount of the loan. The loan was made to Mr. Kulp in about 1931.

At the time of the Kulp & Co. bankruptcy the New York Trust Company still had a balance due, and sustained a loss when the collateral was liquidated. The \$90,000 loan to Kulp by Joseph Baumann originally was secured by some stock of the subsidiaries of National and Federal and I believe by the stock of U. S. Parcel Post Building of Cleveland.

Mr. Baumann does not still hold that collateral. It was returned to Kulp when he delivered the 10,761 shares of stock which he now holds. That was an exchange of 327 collateral. Joseph Baumann is Kulp's step-son-in-law and his wife's name is Mozette Baumann.

The trustee of National I believe now holds the stock of the underlying companies of National. Part of these stocks were formerly held by Baumann. Guild holds these securities of Federal. They were held by Baumann and turned over to the trustee of the two Trusts when the new certificates were issued at the time of the formation of the Trusts, that is 1929 for Federal and 1930 for National. Baumann exchanged his original collateral for 10,000 shares of National in 10,761 shares.

When National was formed Kulp had I believe 20,761.6 shares; out of that block he gave Baumann the 10,000 shares to hold in lieu of the collateral which he had. A claim was filed by Jacob Kulp in the National case covering that 10,000 shares.

No consideration was furnished by Baumann for the 10,761.6 shares acquired in the Seligman case. Prior to the acquisition of the shares through the Seligman case, there was an agreement with Baumann regarding them.

Kulp and I made arrangements with Baumann to borrow \$15,000 to make the purchase in the Seligman case and if he advanced the money we would give him the securities acquired but he did not make the \$15,000 loan to us.

Baumann advanced none of the money for our original purchase of the Seligman securities but he later purchased \$8000 of Crandon bonds for his daughter Jane at a price of \$2400 through Colonial. Those bonds were part of Group 1 which went to Colonial. Said bonds were transferred by me to Colonial and later the Crandon bonds were sold by Colonial to Baumann.

Subject to the loans which I have heretofore mentioned, the 20,761.6 shares of National would belong to Kulp and me. Federal has 100,000 shares of beneficial interest outstanding. I filed a claim on behalf of Baumann, Kulp and myself on 62,358 shares.

These shares were acquired through the Seligman case. My answer with respect to the interests of myself, Kulp and Baumann would be the same in regard to these Federal shares as it was regarding the National shares. I also filed a claim on behalf of myself, Kulp and Baumann on \$286,100 face value of Federal bonds.

These bonds were acquired from Michael Tauber through the Seligman case. My answer with respect to the interest of myself, Kulp and Baumann in those of Federal would be the same as my answer to the claim based upon the shares of Federal and National. Neither Kulp, 328 Baumann or I has possession of 10,761.6 shares of National, 62,358 shares of Federal and \$286,100 face amount of Federal bonds. As far as I know these bonds are in a safety deposit box in the Continental Illinois.

I consider that I have an interest in the securities of both Trusts which are in the Safety Deposit Box.

(In answer to a question as to whether the witness believed she had such an interest at the time she was working on the plans, she stated:)

Under the agreement entered into in July 1933 between Andresen and Kulp, there is a provision that Kulp has a residuary interest in the securities. My understanding with Kulp is that I am to share in the shares of Federal and National that were in that Trust, subject to the terms of the Trust.

The plans of reorganization were worked out in 1935, 1936 and 1937. The securities were then in the hands of a receiver and what disposition would be made of them was hard to tell when we were working on the plans.

329 Hearing before Special Master Archie H. Cohen
October 4, 1946

MYRTLE JOHNSON

(Redirect Examination by Mr. Roberson)

According to SEO Exh. 24, three subsidiaries of Federal had plans which contained provisions for claims of Kulp & Co., as follows: Ferry Station \$34,864.21; Irving

Park \$4,374.38; and McKinley Park Station Building \$6,402.05.

Similar provisions for Kulp & Co., claims were made in the plans of three subsidiaries of National, as follows: Berwyn P. O., \$2,995; Los Angeles \$2,145.04; and Postal \$30,529.68.

Provision was made in the plans of these six subsidiaries for the claims of Kulp & Company.

These claims were a portion of the accounts receivable of Kulp & Co., sold by Klein to Tauber & Co., and in turn sold by Tauber to me. When the plans were drawn up, approved, and confirmed I knew the origin of these claims.

The monies which were advanced by Kulp & Co., to these six subsidiaries and which formed the basis for the claims, included the co-mingled funds of the receipts from the other buildings but not such receipts exclusively. I don't recall having explained to Darrow that these claims came from a fund containing monies of the other subsidiaries.

So far as I recall I did not suggest to Darrow or his attorneys that objections might be filed to these claims. These accounts receivable against the six subsidiaries are presently held by Joseph Baumann.

Darrow knew the relationship of Baumann to Kulp. The only plan I drew was for the voluntary extension of the bonds in North Halsted. The claims of Kulp & Co., against these six subsidiaries, were included because the attorneys had balance sheets showing them.

I did not suggest that they be eliminated. Among the accounts receivable purchased from Tauber was an item of \$15,096.62 against Federal.

330 Darrow and I made it a practice to discuss in detail every provision of the various plans, but I don't recall discussing these plans in detail, or that Darrow asked me anything specific about them. I did not make any attempt to examine into the basis for the claims.

I was fairly well acquainted with the holders of the bonds of subsidiaries whose issues had been sold by Kulp & Co. While we were working on the plans Colonial bought and sold a lot of bonds. The purchases helped the subsidiaries because they could buy from Colonial at an attractive price for their sinking funds.

I don't remember that I told any bondholders from

whom we bought bonds that Darrow was also buying them. I told lots of them that they were receiving the market price. I don't recall that I subsequently told any of them that I resold the bonds to Darrow at a higher price.

Where we bought bonds and sold them to Darrow the same day the price paid to the customer or paid to Darrow was not necessarily the market price. That would be established by the trust committee or Darrow operating the various sinking funds. In fact, I didn't use the term market price in buying or selling bonds. I don't recall that I was asked about the market price when people came in to sell. The market for the bonds was not determined in the office of Colonial.

To a great extent the price was determined by Darrow and the trust committees operating the sinking funds. A lot of these bonds were traded over-the-counter by dozens of houses.

Very often I knew the price fixed by Darrow or the committee for sinking fund purchases when I bought bonds from a bondholder. Thus in some instances I knew when I bought bonds that I could resell them to Darrow at a higher price. The letter to Mr. Roberson dated October 11, 1945 containing my opinion of the present market for bonds purchased by Darrow was not requested by him.

The bonds that Darrow bought have increased in value. They have also increased in value since Mosser became trustee. I am familiar with real estate securities. The market value of real estate securities has increased generally over this same period. There is nothing unusual about the increase in value of these particular real estate securities.

I don't think these securities increased just proportionately to other real estate bonds because there were special circumstances which had some influence on the price. In some instances the percentage of increase was greater than the average. One factor was the existence of sinking funds which started to operate.

331 However, it all relates to earnings and any bond issue with a sinking fund provision relating to earnings would have money in the sinking fund when there were earnings.

There are factors which make these sinking funds probably a little different from some others and permitted them to have more cash available. This would make a difference in the price of the securities.

MYRTLE JOHNSON

(Redirect Examination by Mr. Mulfinger)

A petition for reorganization was filed for Roseland. I worked on that reorganization but it was never completed. Carl and Wilma Compton signed the bonds. She is my mother's sister, and he is her husband. That didn't cause any difficulty in the matter. I never discussed that with his attorneys. In working on the plans I considered that I represented the trust.

At that time I was probably the owner of bonds of some of the subsidiaries. In these reorganizations Darrow consulted with the various parties, figured out prospective earnings, and presented his ideas for plans.

He devoted considerable time to these reorganizations. Attorney Lowenthal suggested that we have Tauber acquire the accounts receivable. Lowenthal represented Kulp & Co., and he handled this matter for me. Goldman filed claims on behalf of Baumann and Mrs. Baumann. They had no counsel in connection with acquiring the accounts receivable. It was our purpose in acquiring these accounts receivable to see that they came into friendly hands, that is, the hands of one who would not press them.

Baumann had a substantial interest in National because he held 10,000 shares as collateral. Kulp and I for 14 years had tried to keep all the subsidiaries above water. Kulp could have taken his good properties and forgotten the bad ones, but that would have hurt a lot of security holders. Baumann has not at any time pressed any of these claims that were allowed in the reorganization proceedings and they have been held intact.

I didn't say that I had in mind that eventually these claims could be cancelled. I don't know what disposition will be made of them. When the indebtedness of Kulp to Baumann is cleared up the claims will come back to Kulp and me, and I don't think we have been unfriendly in any of these proceedings.

332 I believe I realized \$350 or \$400 out of the bonds

I acquired with the receivables. Baumann gave me the balance of the cost and "just added that to what Mr. Kulp owed him". I was paid this money in Kulp's home after the purchase in January, 1937.

Kulp turned over all his interest in bonds of the subsidi-

aries and certificates of beneficial interest to the Andresen trust. The agreement says that Kulp has a residuary interest in those securities.

His residuary interest was not turned over to the receiver, Mr. Hawley, I don't know whether or not the Master so found. After Baumann is paid off Kulp and I might participate in the equitable interest in the 10,000 shares of National transferred to Baumann. I acquired a beneficial interest therein subject to the indebtedness that he has. Kulp owned the beneficial interest in those 10,000 shares originally.

I didn't acquire any interest in that particular 10,000 shares and would have only what interest Mr. Kulp might give me. I consider that I have an interest in the other block of 10,761 shares. I acquired the interest when I purchased the securities at the Bolton sale (in the Seligman litigation). Baumann never authorized me to cancel the \$48,000 claim which he claims to have against National.

Baumann through his attorney George Sullivan sent a telegram to the SEC in 1943 in respect to that item as well as the rest of the securities of the Continental Bank. The difficulty in reorganizing Roseland arose from the fact that the property was not well located and we never had any money.

As I recall the Government moved out in 1932 and we had all kinds of tenants and ran into a zoning proposition. I never considered that I owed that building any rent. Mrs. Revoir wanted to operate a roller skating rink.

After she ran into some difficulty on financing I acquired a $\frac{1}{2}$ interest in the rink in consideration for putting up money needed to start operating. We operated about 8 or 9 months, but it was not profitable. When the skating rink closed there was some rent owed and it has not been paid.

I told Darrow of the trouble my partner and I were having in operating the rink. I went into the venture because the corporation had already expended money for the cost of the floor and I felt that if Mrs. Revoir had somebody who knew something about business we might make a success of it.

333 Everybody knew about our partnership so I don't think it was silent.

MYRTLE JOHNSON

(Examination by Mr. Roberson)

Darrow met Baumann in New York about two years after Darrow came in.

MYRTLE JOHNSON

(Redirect Examination by Mr. Courshon)

I owned an interest in the block of certificates of beneficial interest in the Continental Bank and I put in a list here of other securities of the trusts and subsidiaries that had been purchased and what had been done with them. I owned some of these securities in my own right.

We own other units of beneficial interest which we have in Colonial but I didn't even bother to file a claim on them. They are owned by Colonial and I have an interest in them. I have a few shares of Federal in my name.

I own bonds of the subsidiary corporation but no record of my ownership appears in these proceedings.

There was one instance I believe in the case of the Ferry Station issue where Darrow bought some of the bonds and sold them at a profit to outsiders. So far as I recall that is the only instance in which Darrow bought any of these securities and sold them to outsiders.

I believe there were two or three transactions on that same issue—Ferry Station First Mortgage Bonds.

In no other instances were the securities purchased by Darrow sold to outsiders.

PAUL E. DARROW

(Redirect Examination by Mr. Roberson)

In regard to the claims of Kulp & Co., for which provisions were made in the plans of 6 subsidiaries I satisfied myself that they were fair and correct. I knew that the funds advanced to the subsidiaries came from the account of Kulp & Co., which received all the income of the subsidiaries as well as other income.

334 I don't remember but I presume that I first learned about the account of Kulp & Co., containing the rental income of the securities "as soon as I got over there", which was early in 1935. I don't think that I interposed any objection to these claims of Kulp & Company. I don't

think I discussed with Miss Johnson or anyone else the possibility of objecting to them. I am satisfied that my lawyer went into the claims and wouldn't have allowed them if he hadn't thought they were proper.

Since I discussed everything with my lawyer I think I discussed this matter with him, but specifically I don't remember any of the particular items we talked about. I don't remember discussing these claims with Johnson or Kulp. I have known Joseph Baumann probably 8 or 10 years. I met him first in New York City. The only time I have ever seen him was at Mrs. Kulp's funeral two or three months ago.

Since my visit with Baumann was only social I don't believe I ever told him anything (about my connection with the trusts). I don't recall any conversation with Baumann regarding Federal, National, or the subsidiaries. I don't think he ever mentioned anything to me about Kulp or Johnson. When I met him in New York it was at his home and the members of his family were present and you usually don't discuss business under those circumstances.

Baumann has never been in my Chicago office so far as I remember. If there was any correspondence with Baumann it was probably written by Miss Johnson. I met Baumann in New York when Kulp and I went there in regard to a threatened condemnation of Postal. I talked to Baumann only once on that trip at his home and never saw him again until Mrs. Kulp's funeral, so far as I remember. As I recall nothing was said by Kulp, Baumann or me to indicate that I was trustee.

Probably the fact that Baumann had securities and never asked me about them would indicate he knew that I was trustee, he knew who were associated with me and he would procure the information from them because he saw them frequently.

The purchase of a block of securities in the Fall of 1936 or early 1937 by me from Colonial for \$12,000 included \$84,000 of Federal bonds which I recently turned over to Mosser. They were kept in a safety box from the time of my resignation until I turned them over to Mosser. They were not kept in my personal box but in the box I kept as trustee until I resigned and in the box that I kept as representative of various subsidiaries thereafter. I have a slip in that box showing that none of the things contained therein are mine.

335 That box now also contains securities and papers of 6748 Crandon, Los Angeles, Park View, 6929 North Clark and Windsor Shore. The box contains securities and papers.

I have bonds there of all or most of those corporations. Some of those bonds have been cancelled. All that I have are the property of the issuing corporations, respectively.

(In response to a question by the Master, the witness stated:)

In my opinion none of those bonds or securities should be turned over to Mosser.—I have no other securities issued by the top trusts or subsidiaries and belonging to the top trusts or subsidiaries.

This box is located at the First National Bank and is kept in my name individually.

The box containing my privately held papers is also in the First National Bank and in my individual name.

336 Hearing before Special Master Archie H. Cohen
November 1, 1946

MYRTLE JOHNSON

(Examination by Mr. Mayer)

Where an asterisk appears before an item on Resp. Ex. 11 and 12, that means that the purchase was made from the person listed and the bond was subsequently sold to Darrow in one of his fiduciary capacities. The sales to Darrow were made by Colonial.

I handled the transaction (for Colonial with Darrow). The commission to the salesman was based on the difference between what the salesman took the bond in for and the selling price to Darrow. The salesman made the purchase from an outsider. Where no asterisk appears on Resp. Ex. 11 and 12 the salesman sold that bond to an outsider and his commission was based on the difference between the cost to Colonial and the sale price to the outsider.

Except in transactions involving Darrow, the salesman bought from an outsider and sold to an outsider. Except in sales to Darrow, no commissions were allowed on the purchase of securities,—only on the sales of securities.

In the case of sales to Darrow the commissions were not credited to the salesman until after the sale to Darrow.

In all cases commissions were not credited until the sale was consummated.

In the case of a transaction with Darrow the salesman did not make the sale to Darrow.

His commission resulted from his having purchased the securities. On Resp. Ex. 11 the footnote reflects that the difference between cost to Colonial and the selling price to Darrow of securities sold to Darrow amounted to \$283 and of that amount Robinson was allowed \$188.64. I would not say that the securities on Resp. Ex. 11 and 12 which were sold to Darrow were purchased with the expectation of a sale to Darrow. It seems that we were buying securities at that time.

These salesmen would receive a commission only when the security was disposed of, whether to Darrow or to an outsider. If the security was sold to an outsider by one salesman after having been purchased for Colonial by another, we would work something out on the question of a commission. The salesman who made the sale would obtain a commission if a profit was realized. I do not recall any instance where the salesman who purchased the security but did not effect the sale obtaining a commission.

337 In the cases involving Darrow the salesmen did not make the sale but they had acquired the bond and got the commission. Darrow was also buying from brokerage houses on the street. He purchased for the sinking fund at the going price. I knew what the trust committee told him he could pay for the bonds.

(Mr. Mulfinger reserved his questions on Resp. Exs. 7 through 12 for id. until they are received in evidence).

MYRTLE JOHNSON

(Examination by Mr. Courshon)

At the time the salesman bought the bonds, it may have been the intention simply to acquire them for the account of Colonial in some instances and we may have wanted the bonds for sinking fund purposes knowing we could sell them to the sinking fund. It is not true that the only time we had salesmen acquire bonds was when Darrow required those particular bonds. It would be substantially true to say that the only time we had the salesman purchase bonds was when we had a customer or could sell them to Darrow.

MYRTLE JOHNSON

(Examination by Mr. Roberson)

In the ordinary course of events it was not our practice to pay salesmen the commission at the time they purchased a bond.

(The witness produced a list showing shares of the top trusts which she acquired during Darrow's administration) There were no bonds acquired during that period by me. They were acquired by Colonial and are still held.

(A document containing a list of purchases made by Myrtle Johnson of units of beneficial interest of Federal from April 16, 1937 to Feb. 24, 1943 and of National from May 25, 1940 to February 25, 1943, was marked Guild's Ex. 1 for id. as of 11/1/46)

I do not now own any bonds purchased during Darrow's administration. This applies to bonds of the subsidiaries as well as the top trusts.

I own all the certificates of beneficial interest shown on the exhibit and I own other certificates of beneficial interest of the top trusts.

338 The certificates shown on said exhibit plus the securities in the Seligman case constitute all the certificates which I still own and which were acquired during Darrow's administration. I own bonds or securities issued by subsidiaries.

I do not own any bonds of subsidiaries which I bought during Darrow's administration.

MYRTLE JOHNSON

(Examination by Mr. Mulfinger)

During the time I was in partnership with Miss Devior in the operation of the skating rink, \$1,300.28 accrued in rent and remains unpaid.

339 Hearing before Special Master Archie H. Cohen
November 12-13, 1946

(After argument the Master ruled that Joseph Baumann could not be called as an adverse witness under Rule 43 of the Federal Rules of Civil Procedure).

JOSEPH BAUMANN

(Examination by Mr. Roberson)

My name is Joseph Baumann, 607 West End Avenue, New York, New York. I am president of S. Baumann & Brother furniture house. I have been in that business in New York for over 45 years, and have never engaged in any other type of business. I have never been in the securities or mortgage business. I have spent all my life in New York. I have visited Chicago in my business at least twice a year for the two markets.

Had been here at least a week on each occasion. I have known Jacob Kulp since I married his daughter, Mozette H., about 35 years ago. I have also known Myrtle Johnson about 35 years.

I knew Miss Johnson was employed by my father-in-law. I may have been in Kulp's office in Chicago once but I doubt it very much. I wouldn't know where his place of business was at any time.

I knew my father-in-law when he was in the furniture business with Harris Brothers.

I heard of Jacob Kulp and Company. I bought Post Office bonds and other securities from him.

I bought securities from Kulp & Co. as early as 1926. Originally I believe I dealt with Kulp and subsequently I believe I bought some securities from Miss Johnson. I believe she was Kulp's secretary.

I wouldn't know whether or not she was an officer of Kulp & Co.

I don't recall whether I ever heard of Colonial. I believe my dealings were with Kulp & Co. I made a loan to Kulp & Co.

The original note was dated June 2, 1930, for a loan to him of \$80,000.

(The Master: The witness has produced a note dated June 2, 1930, at New York for \$80,000 due one year after date with interest at the prevailing rate and reciting that the following security was deposited as collateral: 340 all of the stock of Crandon Shore, Austin P. O., Rogers Park, Windsor Park and Grand Rapids and all of the stock owned by Kulp of U. S. Parcel Post. It is signed by Jacob Kulp & Co. and on the reverse is personally guaranteed by Jacob Kulp. On the reverse side the following

payments are indicated:

7/11/30, \$5,000 plus interest;
8/12/30, \$5,000 plus interest;
6/26/31 \$15,000;
6/ 2/32 \$2,500;
8/ 2/32 \$2,000;
9/12/32 \$500.)

No additional payments other than those shown on the note were made. Those payments total \$30,000. The last payment on principal was on September 12, 1932, and the last payment on interest was on February 15, 1935, according to the ledger sheets kept by my secretary. The last payment of principal is on the back of the note. Thus the balance of principal is \$50,000. I received the collateral mentioned in the note and I believe I got it the time I loaned the money to my father-in-law. I put up collateral for the money with the Manufacturers Trust Company to borrow the money for him.

I returned the collateral mentioned in the note to my father-in-law for some shares of National about four, five or six months later. I got a certificate for 10,000 shares of National indorsed by him.

The certificate is in my vault in New York. It was indorsed in blank by Kulp.

It is still in my vault. To the best of my recollection Kulp asked for the stocks originally pledged with me to form this trust. I think Kulp brought a certificate to me and said it was ample security for my loan. I still had confidence in him. I did not ask him what National was.

I don't think he mentioned the name of the trust he was forming but just said he was forming a trust, and I gave him the securities. I believe I got the new securities about six months after I gave him the stock.

I have recently learned that my wife made a loan to Kulp & Co. She told me she had some General Electric and Electric Bond and Share and some bonds that she loaned to Kulp. I discovered that when my mother-in-law died just a short time ago. I think she had some evidence of the loan but I don't know what it was. My mother-in-law died in February 1946.

341 That was the first time I knew that she had made any loan to Kulp and Co. or to Kulp. I did not know the extent of the bond issues against the corporations whose stock I held as collateral, nor did I inquire as to

their debts. I didn't know the value of the stock but took Kulp's word for it.

When I made the loan I received no security other than the collateral mentioned in the note.

I didn't know anything about the properties of these several corporations. I knew they had been constructed primarily for leasing to the Government because I held some bonds that I had purchased.

I had bought bonds of South Side P. O. Service Station, McKinley Park, U. S. P. O., Station "D", Austin, Ogden Park, 22nd Street, 6748 Crandon, Park View Manor, 6929 North Clark, Station "F", Postal Facilities and U. S. Parcel Post. My daughter, my wife and I owned these bonds.

My daughters are Jane Baumann and Marahlea Abrams. I didn't know anything about the financial condition of these corporations but I received interest. I did not discuss with Kulp or Johnson anything about the leases on these properties.

I figured my money was secure because the Government occupied a great many of the buildings and doesn't default on its rents.

I have heard of Federal Facilities Realty Trust. I wouldn't know the purpose for which National and Federal were formed.

I believe I have an interest in Federal. I haven't any certificates of National or Federal that were issued as a result of turning in bonds of the subsidiaries.

I don't recall whether I was ever informed that I could have exchanged some of my bonds for certificates of beneficial interest.

I knew that Kulp and Co. went into bankruptcy. I think Louis Goldman represented me.

The 10,000 shares of National that I received as collateral for the \$80,000 note are still in my box and have never been disturbed.

The only security I received was the original securities and then I got the 10,000 shares.

(Claim filed by Joseph Baumann in the amount of \$54,158.33 on June 12, 1936, in the Kulp and Co. bankruptcy case was marked S.E.C. Ex. 28 for id. It was marked in pencil with leave to substitute a photostatic copy.)

342 That exhibit bears my signature. The power of attorney on the reverse side also bears my signature.

(S.E.C. Ex. 28 was received in evidence). I most likely did read this proof of claim before I signed it.

(When the witness was asked whether he held any security for this debt of Kulp and Co., Mr. Herriott objected on the ground it had already been answered, but Mr. Mulfinger stated it was appropriate since the exhibit states he received no security. Mr. Herriott then said that the witness had received no security from the bankrupt but only from Jacob Kulp as he had testified.)

I held no other security except what I have mentioned. I believe I signed the claim in blank.

My secretary took my acknowledgment. This (indicating the body of the claim) is not her handwriting nor mine and I don't know whose it is. I can't truthfully say whether or not I signed the proof of debt in blank and mailed it to my attorney.

I don't recall whether I informed Mr. Goldman, my attorney, that I had security for this debt. I can't recall whether I told him I had a note and also security for the debt. I believe Goldman is related distantly in some way to my wife.

I don't believe Goldman represented me in any other matters. When Kulp and Co. went into bankruptcy I did not inquire or make any investigation as to its assets or the likelihood of my receiving payment. I only had my father-in-law's word that I wouldn't lose any money.

I didn't discuss the filing of the claim with my father-in-law. He told me I would not lose any money when I made the loan. I didn't discuss it with him at the time of the bankruptcy nor with Miss Johnson. At the time of the bankruptcy I did not know whether Kulp was financially able to pay the \$50,000 balance on the note. I did not inquire into the value of my collateral.

I didn't know what National owned, or the names of the subsidiaries.

It would be hard for me to say whether I had any information regarding reorganization of the subsidiaries. I don't remember whether I received any notice from any of the courts regarding such proceedings.

I don't recall whether I knew that National and Federal were in reorganization. I don't believe I knew they were having difficulty and their affairs were being administered under a court. I don't recall that I ever discussed the

matter with Miss Johnson or Mr. Kulp.

343 I may have written to inquire why I wasn't getting any interest on bonds. I believe I knew that the sale of the receivables would take place prior to the sale.

I believe Miss Johnson informed me of that. I advised her to purchase them for me.

I said I would pay between \$5,000 and \$10,000 for them. I was willing to risk the additional amount to protect myself on my note.

I don't think I knew what the receivables were but relied on Miss Johnson. We discussed it over the wire. We would call my mother-in-law's house in Chicago or they would call us once a week and Miss Johnson was usually there. As a general habit we did not discuss business affairs.

She didn't discuss the financial condition of the companies against which these receivables lay. I can't recall that she told me the companies were in reorganization. I don't believe she told me that any of the receivables had already been accorded participation under plans.

Miss Johnson informed me that the receivables were possibly worth \$5,000 or \$10,000. I can't say I knew that she was performing services in connection with the reorganizations of these corporations.

I had so much confidence in her because she was in the employ of my father-in-law. I didn't know that my father-in-law was still associated with the properties at that time, (the fall of 1936).

I had Miss Johnson buy the receivables for me. I believe she paid about \$500. I paid her by cash in Chicago. She might have told me what she paid for them but I don't recall. She most likely told me how she arrived at this price of \$500 but I have no recollection of it.

When I gave her the \$500 she gave me the securities which are now in my vault. I did not have an attorney examine these papers at any time.

I think I purchased them to secure myself on my \$50,000.

Miss Johnson suggested that I purchase the securities as additional protection. I don't hold the receivables as collateral but as protection against the indebtedness to me of my father-in-law or Kulp and Co.

If the original 10,000 shares of National are sufficient to protect me, I really don't know what will happen to the receivables.

344 I don't think I got an inventory or list of the receivables when I bought them.

When I obtained the receivables from Miss Johnson in Chicago, I don't believe I inquired why they cost \$500 instead of between \$5,000 and \$10,000.

I was not interested in buying the books and records of Kulp and Co. Miss Johnson did not inform me as to what disposition was made of the books and records. I don't know whether or not Miss Johnson ever told me that she wanted the receivables in my hands so that they would not be in unfriendly hands.

The thought of buying the receivables came from Miss Johnson. She thought it would be a good idea to buy them as protection. I believe that was the only reason she gave.

I can't recall whether there was any other reason why I was interested in purchasing these accounts.

The statements of Miss Johnson in the record regarding the reason for my purchasing the receivables (p. 1208) and her statement that she discussed the assets of the trust with me (pp. 1188-9) do not refresh my recollection.

I don't believe Miss Johnson discussed the assets of the trust with me when the loan was originally made and I don't recall that she discussed the assets with me thereafter.

I do not recall whether I ever engaged in a discussion regarding the financial condition of any of the post office buildings, or anything pertaining to them.

I think there was something to that effect, but it is not clear in my mind. I can't say whether or not Miss Johnson was correct in stating (p. 1190) that she discussed the matter with me in 1946, when I was here for Mrs. Kulp's funeral.

I don't recall whether I discussed the matter with Miss Johnson or Kulp between 1930 and 1946.

I never inquired as to the value of the collateral securing this loan. I don't believe I filed a claim against National as owner or as holder of collateral of 10,000 shares.

Kulp never discussed with me his filing a claim thereon, or the advisability of anybody filing such a claim.

345 I don't think I filed or authorized filing of any claim against National or Federal. I believe I have an interest in some stocks and securities here in Chicago relating to National and Federal, but I can't say what that interest is.

Miss Johnson and I had some discussion about my buying some securities in the Seligman case.

Before testifying here, I went over the matter with Miss Johnson to try to refresh my recollection. I was in Mr. Herriott's office yesterday.

I never discussed the matter with Mulfinger, Courshon, Mayer or Roberson. I was never shown the transcript of prior testimony nor was it read to me.

I believe if what I have in my box will not cover my debt, I would have a claim against the securities here: \$200,000 or \$300,000 bonds of Federal, 10,000 shares of National and some shares of Federal. I was asked to furnish funds to purchase them, and had the cash.

I was not called upon for funds, but was promised the securities as protection for my loan when I offered to loan \$25,000 for a limited time.

Miss Johnson was to call on me if she needed the \$25,000. I never saw the securities nor obtained possession of them. I know Darrow. I met him during the New York World's Fair when he was at my home for dinner.

I can't recall whether I inquired of Kulp or Johnson why I was not receiving payments on the Kulp & Co. note or on subsidiaries' bonds.

Neither Kulp nor Johnson discussed with me the financial condition of Kulp & Co. or the subsidiaries that necessitated suspension of payments, and I wasn't interested. I might have made inquiry as to suspension of payments, but I don't recall. I don't think I ever knew that Darrow was trustee of National and Federal. I don't remember his being in the picture at all. I don't recall, but I don't believe that I did know there was a trustee of National and Federal. Darrow was a personal guest to my house for dinner, that is all.

My wife knew Mr. and Mrs. Darrow and invited him. I can't recall whether I knew that Kulp and Johnson were still working in connection with management of the properties of the corporations whose bonds I held from 1935 on.

During my twice yearly trips to Chicago, I would see Kulp and Johnson frequently. I stopped at my mother-in-law's. We didn't discuss matters regarding National and Federal. I was here on business and spent most of my time at the Furniture Exchange.

I can't recall whether I learned through Kulp, Miss

Johnson or otherwise that National and Federal were in reorganization. I guess I first learned about it yesterday from Miss Johnson. I still don't know it "if you ask me point blank," nor do I know anything about the securities.

And I am not interested. I am interested only in getting the money I loaned my father-in-law. I am not worried about it because he guaranteed it. I trust him and Miss Johnson implicitly. I don't believe I was interested in the fact that the reorganization of National would affect the value of my security.

I met Darrow twice in New York and these are the only times—both during New York World's Fair.

We didn't discuss business at all. I didn't know he had any interest in National or Federal. I don't think I knew that Kulp and Miss Johnson were associated with him in business.

I don't believe they told me with whom they were associated. I wouldn't want to say that Darrow's name was never mentioned in my semi-annual trips to Chicago or our weekly telephone calls. I spoke to Miss Johnson often on the telephone when she was at the (Kulp) house.

I always believed Kulp was with Kulp & Co. after 1935. I know Miss Johnson was at the office right along. I didn't know Kulp had an employee from 1935 to 1943. I don't believe I knew he had lost control of the trusts.

And I believed Miss Johnson was still with Kulp & Co.

I don't understand Miss Johnson's statement (p. 1209) that I cooperated in working out the plans of the companies in which I owned securities. If she asked me to return the securities I would do so. I had nothing to do with any reorganization to my knowledge.

I did not discuss with Kulp or Miss Johnson between 1935 and 1943 any affairs of Kulp & Co.

The weekly telephone calls were just short personal calls. We did not discuss business although Kulp might have asked how the furniture business was.

It is my recollection that we did not discuss National or Federal. To my knowledge I did not file any claims against any of the subsidiaries. I don't recall whether I received notice that the time for filing claims had been fixed in the reorganization of the subsidiaries.

347 I didn't discuss with Kulp or Johnson the appoint-

ment of a trustee for National and Federal. I don't recall whether, from 1935 to November 11, 1946, I knew that National or Federal was in reorganization. I don't recall whether I had any such information. And that is true as to the subsidiaries also.

JOSEPH BAUMANN

(Cross Examination by Mr. Herriott)

When I was in your office I showed you some ledger sheets, some correspondence between myself and Kulp regarding the loan, the note that has been produced here and another note that Kulp gave me. I borrowed the money for that loan from the Manufacturers Trust Company.

(Letter from the Manufacturers Trust Company to Baumann acknowledging receipt of certain collateral was marked Resp. Ex. 13 for id.) I borrowed \$80,000 from the Manufacturers Trust Company and I turned it right over to Kulp. I pledged the securities mentioned in Resp. Ex. 13 as collateral.

(Resp. Ex. 13 was received in evidence. A note for \$50,000 dated Nov. 1, 1937, payable to Baumann's order and signed by Jacob Kulp was marked Resp. Ex. 14 for id.)

Since I believe that in New York the statute of limitations on the note is about seven years, I asked for a renewal and received said note representing the balance due me.

(A copy of a letter dated October 21, 1937, from Baumann to Kulp requesting a new note was marked Resp. Ex. 15 for id.) I received this note from Kulp as a result of said letter. Resp. Ex. 14 for id. was a renewal note.

(Resp. Ex. 14 and 15 were received in evidence.)

When I received this \$50,000 note dated November 1, 1937, I continued to hold the original note of Kulp & Co. I do not claim that the indebtedness is for \$100,000 but only \$50,000, although I never returned the original note. My secretary, Miss Botthof, placed a pencil notation on the back of the last note "no int. paid since 3/1/35."

(Ledger sheets of Baumann showing the account of Kulp and Kulp & Co. with Baumann were marked Resp. Ex. 16 and 16A for id.)

There is no significance to the fact that one sheet is headed Kulp & Co. and the other Jacob Kulp. Ex. 16A is a continuation of Ex. 16.

348 (Resp. Ex. 16 and 16A were received in evidence.)

In regard to the receivables, Miss Johnson told me there was going to be an auction and that it would be a good policy on my part for me to purchase them to protect my loan. She did not tell me that in her opinion they would probably be worth more than the cost to me.

349 Hearing Before Special Master Archie H. Cohen.
November 13, 1946

JOSEPH BAUMANN

(Cross examination by Mr. Herriott)

My wife's claim against Kulp arose when she delivered to him some securities including shares of General Electric and of Electric Bond and Share.

My wife delivered to Kulp 200 shares of Electric Bond and Share and 400 shares of General Electric. I have seen a document indicating that said securities had been received by Mr. Kulp.

I think it was dated in May 1930.

Since yesterday's session I have refreshed my recollection through a discussion with Miss Johnson.

I now recall that I got some papers to sign in connection with Federal and National. They were prepared in Chicago and I returned them to Miss Johnson. There were also some papers sent to me in connection with reorganization of subsidiaries.

I just signed them and returned them. I wasn't interested in the reorganizations or affairs of Kulp & Co. or National or Federal or the subsidiaries because as I said, I had implicit confidence in Miss Johnson and my father-in-law's repeated statements that I would be paid in full.

I did not mean that I was not interested in repayment of the money that I had loaned.

I concluded that I had some interest in some securities held in Chicago because of the following circumstances: Miss Johnson told me on the long distance telephone that about \$25,000 was needed to purchase a block of securities which was to be sold at auction and which she thought I should have as an additional protection to my loan. There

were bonds etc. which she believed could be liquidated for at least \$25,000 to pay me back the \$25,000 I was to loan her. There were also some 60 odd thousand shares of Federal and I think about \$285,000 worth of bonds.

There was also 10,600 or 10,800 shares of National. Miss Johnson said that if those were bought they would be held for my benefit until my loan was paid. I know these securities are in a vault in Chicago but I have not seen them. It is my opinion that I have some interest in them until my wife's loan and my loan are paid. I bought bonds from time to time for my wife, my daughters and myself and I put up all the money.

350 I bought the bonds from Kulp & Co. on my own initiative. I don't recall any that I purchased after Kulp & Co. went into bankruptcy. I have quite a block of these securities today.

JOSEPH BAUMANN

(Examination by Mr. Roberson)

Resp. Ex. 14 is the renewal note executed by Jacob Kulp. There was no subsequent note executed by Kulp. That note was mailed to me in New York from Chicago about the date it bears.

I didn't get one in 1944. It may have slipped my mind.

I don't know why this note wasn't signed by Jacob Kulp & Co. I asked for a renewal of the note, saw it was for \$50,000 and put it in my vault. I didn't inquire of Mr. Kulp why this note didn't bear the signature of Kulp & Co. I just wanted some evidence that the debt was still due me. I testified yesterday that I thought Kulp and Miss Johnson were still employed by Kulp & Co.

I said I still thought there was a Kulp & Co. I had implicit confidence in my father-in-law and therefore didn't question the omission of a signature by Kulp & Co. Although I purchased the receivables of Kulp & Co. in 1936, I didn't give any thought to the question of whether or not it was still in existence.

Between 1935 and 1943 I was never in the office of Kulp or Miss Johnson. I was never in the office of Paul E. Darrow and did not know where it was. I have never addressed any communications to Mr. Darrow and I do not believe I ever received any communications from him.

The reorganizations I refreshed my recollection about concerned some bonds I believe that I bought and Miss Johnson took care of them. I had confidence in Miss Johnson because I have known her for a number of years and my wife grew up with her. I didn't know she was in a position where she knew the inside details of the trusts and subsidiaries.

I knew that my father-in-law had started these post office companies and sold bonds to me.

I knew that Miss Johnson was employed by him.

After refreshing my memory about National and Federal, I recall that I had signed some papers in connection with their reorganizations about four or five months ago.

351 I can't recall what they were but Miss Johnson prepared them and I signed them and returned them to her. I am pretty sure they were claims filed in the estate of National and Federal. They were in connection with these receivables.

I signed these papers without discussing them with my brother-in-law, Mr. Ballanberg, who was a lawyer and is with our firm. He knows about my dealings with my father-in-law.

I believe these documents were claims filed on behalf of myself, Kulp and Miss Johnson but I am not sure.

Athought I own bonds of subsidiaries which underwent reorganization, held 10,000 shares of National as collateral, came to Chicago at least twice a year and frequently talked to Kulp and Miss Johnson, I didn't know that Darrow was trustee of National and Federal because I don't believe we ever discussed it. In my conversations with Kulp and Miss Johnson from 1935-1943, I don't remember whether or not the name of Darrow was mentioned. It is impossible but I don't recall whether or not the words "trustee of the National" or "trustee of the Federal" were mentioned.

I was willing to do anything that Kulp or Miss Johnson asked me to do without looking into the details.

I never attempted to collect anything on the aforementioned accounts receiveable. I never did anything about them.

I can't recall whether I received copies of plans for the subsidiaries. I might have gotten them, but never paid any attention if I did.

I don't believe I ever sent in a vote on any plan. I don't believe I received any letters in connection with plans of subsidiaries. I don't believe I have any correspondence regarding the reorganization of the trusts or subsidiaries.

It may be possible, however, that I did receive them. I have received interest on certain bonds of subsidiaries since 1935.

I believe I sent coupons representing interest I was to receive. I sent them to Miss Johnson.

I received a check for the coupons I sent and I believe it was accompanied by a letter signed by Miss Johnson.

The name of Darrow was not on the letterhead.

352 I don't remember who signed the checks. I didn't look at the signature but gave it to my girl to deposit. I might have looked at the check. The letterhead what accompanied the check was Myrtle Johnson's personal letterhead. However, I can't say that is true in every instance.

I have never been an officer or director of any of the 27 building corporations.

JOSEPH BAUMANN

(Cross-examination by Mr. Herriott)

(A letter from Kulp to Baumann dated 10-26-37 regarding the renewal note for \$50,000 was marked Resp. Ex. 17 for id.)

(A carbon copy of a letter from Baumann to Kulp dated 10-28-37 was marked Resp. Ex. 18 for id.)

(A letter from Kulp to Baumann dated 11-1-37 with which the note of \$50,000 was enclosed was marked Resp. Ex. 19 for id.)

(A letter dated 12-15-45 from Ann Botthof to Miss Johnson regarding second renewal of the note was marked Resp. Ex. 20.)

(A carbon copy of a letter dated 12-20-45 from Kulp to Baumann was marked Resp. Ex. 21.)

(A carbon copy of a letter dated 5-22-46 from Myrtle Johnson was marked Resp. Ex. 22 for id.)

(Resp. Ex. 17 through 22 were received in evidence.)

Louis Goldman never represented me in connection with National or Federal.

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Hearing before Special Master Archie H. Cohen
November 26, 1946

(Mr. Roberson stated that he would rest subject however, to the reservation as to the material requested of Baumann in a letter which Herriott recently forwarded to Baumann. Mr. Mulfinger stated that he would rest subject to the same reservation and also subject to a realignment of his exhibits in proper order and numerical sequence. He added that of course the closing was subject to anything that may have honestly been overlooked in the matter. Mr. Courshon stated that he joined in both of the positions taken. The Master also stated that he understands then that the objectors rest with the agreement, however, that there may be additional testimony on account of documentary data that Baumann has been requested to forward.)

354 Hearing before Special Master Archie H. Cohen
March 5, 1947

PAUL E. DARROW

(Examination by Mr. Herriott)

I previously testified to my gas company and bank experience. For two years I was one of 3 trustees of Rosenbaum Grain Corporation. I subsequently resigned to become sole trustee of its subsidiary, Chicago Elevator Properties.

I occupied that position for about 2 years and was assisted by Mr. Herriott as my counsel. The company operated a string of grain elevators. I graduated from Dartmouth in 1904. The gas company I mentioned was in a town of 5000.

It had suffered losses and was ready to close. I went to Colorado representing needed new money and I ran the company from 1907 to 1928 when it was sold. During that time the customers increased from 225 to over 2400, our mains lengthened from 5 to 25 miles and we built a new plant.

I was appointed temporary trustee of National and Federal on April 25, 1935 and actual trustee on May 25, 1935. I first spoke to Andresen former trustee acting under a trust agreement.

The organization consisted of Andresen, Myrtle Johnson, Kulp, Marquiss, Gertrude Johnson, about 3 stenog-

raphers and a messenger. I continued the organization as it existed.

I continued Myrtle Johnson in my employ until the matter was wound up. I employed her largely on the advice of Andresen. Kulp had never received a salary for assisting Andresen, and that arrangement continued after my appointment until I felt we could pay him a reasonable salary. In my first meeting with Adams and Jacob Kulp at which Myrtle Johnson was present, Adams asked if Kulp wrote the insurance, and Kulp said he had written most of it since the properties were built and most of it during Andresen's tenure.

In response to Adams' question, Miss Johnson or Kulp said that the commission amounted to about \$200 per month.

After I became trustee I permitted Kulp to be paid commission on insurance written for the trusts.

I personally, as an individual, received no part of commissions paid to Kulp from him or anyone else. Neither did I receive any part as trustee. As far as I know Kulp retained the entire commission paid him.

355 After I graduated from Dartmouth in 1904, I worked for a bond house in Chicago for A. C. McClurg for about 6 months and for a chemical laboratory in Cuba as a chemist. I went to Colorado in 1907. On my return in 1928 I became assistant to the president of Amalgamated Trust & Savings Bank. From 1930 to 1935 I worked for David A. Noyes & Co., stock brokers, doing most of the statistical work.

Then I became trustee of Federal and National. When I first went to the office of the trust maintained by Andresen, Colonial was also operating in that office and the business of Jacob Kulp & Co. was being wound up. Andresen remained in charge until May 31st.

I took over as of June 1st, prior to which Andresen turned over to me securities belonging to the trusts and possibly some belonging to the individual companies. While I was temporary trustee and Andresen remained, he received his regular salary of \$1000 a month.

Adams personally was appointed as my counsel, but he assigned Williamson to take charge of my work. Within a week after I was appointed a meeting was held in Williamson's office attended by Williamson, Adams Andresen, Kulp, Miss Johnson and myself. I made definite arrange-

ments with Miss Johnson in regard to her working for me at or as a result of that meeting.

She was to give me all the time and energy necessary to help run the trusts and she was to be allowed time to operate Colonial Securities Corporation. I had not heard of Colonial or Miss Johnson prior to my appointment as trustee. About June 1, 1935 I, as trustee of National and Federal, filed a number of petitions for reorganization of certain of the subsidiaries, at the instigation of my attorney, Mr. Adams.

Not all of the petitions proposed by Adams were filed, because Miss Johnson explained to me that some of these subsidiaries had not defaulted in any way. Except for her information the petitions suggested by Adams all would have been filed. Later when some of these subsidiaries defaulted or were close to a default petitions were filed for their reorganization.

These subsequent petitions were filed about a year to three years thereafter. In June 1935, petitions were filed for reorganization of Station D, Dallas, Irving Park, McKinley, Park, Quincy Station, Roseland Building, St. Louis, South Side P. O., 22nd St. Station, Villa Garage, Armour Station, Berwyn P. O., Division and Laverne, Ogden Park and I believe, Station F. At the time of my appointment Grand Rapids had been reorganized; the cases of Austin Station and Park View Manor were pending; and 6748 Cranden, 6929 N. Clark (Rogers Park) and Windsor Shore had been foreclosed.

356 The reorganization of Chicago P. O. Service Station against which Adams proposed to file a petition at once, was not commenced until October 1936. A petition was never filed against Columbus because it was evident Columbus would pay off the obligation shortly.

Miss Johnson drew the plan for North Halsted, negotiated with bondholders and completed its voluntary reorganization. A reorganization of LaGrange has not taken place, but eventually it will be reorganized. A petition was never filed in the case of the Los Angeles property. It had been owned directly by National and not by a corporation. When the bonds became due negotiation resulted in a plan under which a new corporation was formed. National obtained 25% of the stock and the bondholders received 50% of their old bonds in new bonds and 50% in stock.

Except for Roseland, the reorganizations of all the companies have been completed against which petitions were filed by me or before my appointment. While I was trustee the following were completed: Chicago P. O., Station D, Dallas, Ferry Station, Irving Park, McKinley Park, North Halsted, Quincy Station, St. Louis, South Side, 22nd St. Station, Villa Garage, Armour, Austin, Berwyn, Division and Laverne, Station F, Los Angeles, Ogden Park and Park View Manor.

I included North Halsted which was reorganized without a petition having been filed. I first purchased securities of subsidiaries in June or July, 1935. This was for the sinking funds of two or three of the companies and was an ordinary operation.

I did not buy any bonds for the trusts until about Sept. 1935. On three occasions I bought bonds in my own name or with money I supplied.

In Oct. 1935 we had \$5000 in 22nd St. and \$5000 of Quincy Seconds offered to us.

I thought I would help Federal if I bought them. The total \$10,000 in bonds was offered for \$2025. I knew Quincy had a lease until 1941 and 22nd. St. until 1944 or 1945. I knew they would pay interest and that we would have to pay more for them later. The trust had no money but I thought it my duty to do everything I could to make the properties worth something eventually. I went to the First National Bank and borrowed \$2025 to buy them. I wanted it separate so the interest could be paid by the trust and the interest coupons received would go to the trust.

I made the loan individually and put up my own collateral consisting of \$3,000 N. Y. Railways Corp. 6% bonds. I then bought the \$5000 Quincy Seconds and \$5000 of 22nd Street bonds.

357 The Quincy bonds are shown on Schedule 2-J attached to my final report and account. They are bond Nos. M-195, 196, 197, 198 and 199. That schedule shows that the bonds were "bought from P. E. D./Graham & Co."

P. E. D. represents my initials and Graham & Co. is the company from whom I bought the securities. The date of 10/29/35 to the right of Graham & Co. on the schedule indicates the date I bought the bonds from the Graham Company. The note I referred to is dated the same day.

(Note of Darrow to First National Bank for \$2025 was marked Respondent's Exhibit 1 for id. as of 3-5-47 and was received in evidence).

Said schedule 2-J shows that Federal bought the particular bonds, the numbers of which I just stated, on Sept. 9, 1937. That is it paid the cost price and the money was applied on my note. As shown by said schedule 2-J, those bonds were sold to "S. F." meaning sinking fund of the subsidiary Quincy.

The cost to Federal of each of these \$1000 bonds was \$202.50 or a price of $20\frac{1}{4}$, which is the same amount I paid.

I paid the note marked Exhibit 1 to the bank with a check of Federal payable to me and endorsed to the First National. \$3000 of its bonds were sold to Quincy for its sinking fund on Sept. 9, 1937 for \$350 each. The price was fixed by Quincy's Board of Directors.

The other two were also sold to Quincy at the same price on September 1, 1938 by Federal. Federal paid the interest on my loan to the bank.

On Nov. 12, 1935 we bought \$76,000 par value of various issues for \$6837.50, that made a total of those two notes of \$8862.50. In that block there were \$11,500 of Quincy Seconds for which we paid 10. Of the 16,000 of Quincy seconds which I have mentioned as having been purchased, we sold \$11,500. On those \$11,500 we collected \$1868.75. interest. On the \$5500 not sold which I turned over to the successor trustee, the interest was collected in the amount of \$1681.50, making a total of \$3550.25 in interest collected on the said \$16,500 of Quincy bonds.

(Statement by Master: In order to save time I would point out that the schedule shows that on the first \$3000 of the \$5000 in bonds purchased from Graham & Co. and sold on Sept. 9, 1937. \$140 in interest was collected on each bond. On the last two which were sold on Sept. 1, 1938 the interest collected was \$188.75 each. That makes a total of \$797.50)

My records show more than that but I am willing to take that figure.

358 I borrowed \$2025, the exact amount needed to buy the above mentioned Quincy and 22nd Street bonds. \$1012.50 was the cost of the \$5000 Quincy and the same amount was the cost of the \$5000 22nd Street. Federal paid the First National Bank 4% interest.

This note for \$2025 was paid on Sept. 9, 1937. The interest on that amount accrued from Oct. 29, 1935 to Sept. 9, 1937 at 4%. I mentioned a similar loan I made for a similar transaction. The two loans were not separated and sometimes interest was paid on one note and sometimes on both. A check of \$25 for interest was given to me and turned over to the First National Bank.

On said note of \$2025 Federal paid interest of about \$153. I individually never received any of the interest paid on these \$5000 of Quincy bonds above mentioned. All of the coupons as they matured were deposited to the credit of Federal. I supplied the money to purchase the bonds from Graham & Co. from the proceeds of a loan from the First National, then Federal paid the interest on the note as it accrued.

Federal collected all of the interest on the bonds from the time they were purchased from Graham & Co. Although a check mark appears on the note in the blank left for rate of interest, the rate of 4% is indicated under the signature of the officer who authorized the loan. Another memo showing "Bills Discounted for Paul E. Darrow" also states that 4% was the rate of interest. On September 9, 1937 Federal sold only \$3000 of the \$5000 of Quincy seconds as shown in schedule 2-J.

Federal paid the note in installments. The note shows payment on May 6, 1936 of \$1350.50 and on Sept. 9, 1937 it shows a payment of \$672.50 or a total of \$2025.

On Sept. 9, 1937 Federal gave me a check in sufficient amount to pay the balance due the First National and on the same date it sold to Quincy \$3000 of said Quincy seconds. The other \$2000 remained in my possession until Oct. 6, 1937. On that date Federal got \$3000 Quincy seconds. On July 14, 1938 Quincy got \$4500. Federal got \$4000 Quincy seconds on Oct. 11, 1938. On Sept. 9, 1937 I was still indebted to the First National for other money borrowed to acquire bonds.

The other indebtedness was originally \$6837.50 borrowed on Nov. 12, 1935.

(Note of Darrow to First National dated Nov. 12, 1935 for \$6837.50 was marked Respondent's exhibit 2 for id. as of 3-5-47).

359 To secure the loan represented by Exhibit 2, I put up collateral of \$10,000 International Railways of Central America 6½'s and \$2000 in bonds issued by an Italian

Electric Company whose name I will try to give you. These securities and the securities put up as collateral for the other note I mentioned belonged to me personally. I put up no securities of Federal or National as collateral for this loan.

Nor did I deposit any securities of subsidiaries. That is also true in regard to the \$2025 loan.

(Respondent's exhibit 2 of 3-5-47 was received in evidence).

With the proceeds of the loan indicated by Exhibit 2 I bought \$76,000 of securities of various subs of Federal and National.

The list includes 11 issues of securities of National and Federal.

360 Hearing before Special Master Archib H. Cohen
March 18, 1947

PAUL E. DARROW

(Examination by Mr. Herriott)

(Mr. Herriott stipulated for the record that the objectors would have a standing objection to his line of questioning pertaining to loans made by Darrow for the purpose of purchasing securities at a time when the Trusts or subsidiaries were financially unable to make the purchases.)

Beside the loan indicated by Darrow's Exhibit 1 of March 5, 1947, I made other loans from the First National Bank during 1935. One of these was evidenced by Darrow's Exhibit 2 of March 5, 1947. Again on March 10, 1939, I borrowed other money from the First National Bank.

As shown on Darrow's Exhibit 2 of March 5, 1947, I deposited as collateral for the loan evidenced by said exhibit \$10,000 of International Railway of Central America bonds and \$2,000 of United Electric Service bonds and other securities, all of which belonged to me individually. This is also true of the \$3,000 of New York Railway bonds shown on Darrow's Exhibit 1 of March 5, 1947. With this money I bought \$5,000 22nd Street and \$5,000 Quincy securities at 201/4 on October 29, 1935.

On November 12, 1935, for \$6,837.50 I bought from Custin & Company \$1500 Irving Park Seconds at 15, \$1000 La Grange Firsts at 10, \$8500 Los Angeles Firsts at 8, \$5000 North Halsted at 12 1/2, \$2000 Ogden at 12, \$17,000 Park

View old par bonds at 12, \$11,500 Quincy Seconds at 10, \$3000 Roseland at $8\frac{1}{2}$, \$600 South Side at 15, \$6000 22nd Street at 15, and \$10,500 Villa Garage at $6\frac{1}{2}$. That is a total of \$6,837.50.

I never considered that I was buying these bonds as an individual. Otherwise, I would have collected the interest thereon. The difference between these purchases and others for the Trusts was that the individual company didn't have enough money so I advanced it. Federal and National paid the interest on the notes designated as Darrow's Exhibits 1 and 2 of March 5. The interest was paid directly to the bank.

361 On May 5, 1936, \$2000 of Ogden, \$1000 of La Grange and \$5000 of 22nd Street were taken out for \$1352.50. By that I mean they were taken out of the collateral which was bought as a result of the proceeds of this loan. I retained possession of the bonds until they were paid for by the Trusts or the subsidiaries. The checks for principal and interest were made to me personally and I endorsed them to the First National Bank.

On May 27, 1937, \$3000 Roseland and \$10,500 Villa Garage were taken for \$937.50. At that time a check for that amount was drawn to me and endorsed to the First National Bank in payment of principal and interest on my notes.

Eventually all the securities acquired with the proceeds of these two loans were paid for by the Federal group or the National group, and my notes were thus paid in full and returned to me. I received no more for any of these securities than I had paid for them. As far as I know, these transactions are set up in my final account.

On September 9, 1937, \$5000 Quincy Seconds were taken out for \$1012.50, which is the same as my cost. On October 6, 1937, \$1500 Irving Park Seconds, \$5000 North Halsted, \$3000 Quincy Seconds and \$6000 Park View were taken out for \$1675. That amount plus \$45 paid on April 30, 1938 makes the exact figure which I paid for these latter securities. On July 15, 1938, \$4500 Quincy Seconds, \$600 South Side, \$6000 22nd Street, \$8500 Los Angeles, and \$12,000 Irving Park were taken out for \$3440, which is the exact price I paid for them.

On October 11, 1938, \$4000 Quincy Seconds were taken out for \$400 and that makes a total payment of \$8862.50,

which is the amount of the two notes under consideration. The Trusts paid \$717.22 as interest on the two notes designated as Darrow's Exhibits 1 and 2 of March 5, 1947.

From the time these securities were first acquired until they were taken out by the trusts, a total of \$10,062.14 in interest was paid on these securities, all of which the Trusts or the subsidiaries received. These securities had a higher value at the time they were taken out than they had when they were originally purchased.

Schedule 2-J, which is part of my final report in Federal, treats of the \$5000 Quincy Seconds which I purchased for \$202.50 on October 29, 1935, those being part of the securities purchased with the proceeds of my individual loans.

362 That schedule shows that on September 9, 1937 the Trust paid me \$202.50 for those bonds. According to the schedule, I paid \$202.50 each for the bonds. The notation in the center of the page to the effect that the items were sold on September 9, 1937, means that on that date they were turned over to Quincy by Federal.

According to the schedule, the Trust received \$250 each for three of the bonds from Quincy. The schedule shows that on September 1, 1938 the Trust sold the remaining two \$1000 bonds to Quincy for \$350 apiece. Schedule 2-J also shows that I bought a total of \$11,500 in bonds at 10 from Custin & Company on November 12, 1935, which is the same date I borrowed \$6837.50 from the First National Bank. Those bonds were paid for by the Trust at various times. On October 30, 1937 it took out \$3000 of bonds at 10, which is the price I paid Custin.

According to Schedule 2-J, the Trust received \$175 apiece for \$3000 of Quincy bonds which formed a part of that group from Quincy. On July 15, 1938, the Trust took out \$4500 of bonds at 10, which is the price I paid Custin.

On October 11, 1938, the Trust took out \$4000 of bonds at 10 which is what I paid for them. Two of them were later sold on May 17, 1939 for \$300 apiece.

I want to correct my prior statement on Irving Park. They were first mortgage bonds and not seconds. I paid \$195 for \$1500 of those bonds. They were taken out on November 12, 1935 at the same price. As far as I know, those bonds are still held by the trustee and are selling at par.

According to Schedule 2-I, \$5000 North Halsted bonds were taken out on October 6, 1937 at a cost of \$125 per \$1000, which is what I paid for them. On May 22, 1937, the Trust took out \$3000 of Roseland Firsts for \$85.00 per \$1000, which is the price I paid. There has been no interest on those bonds.

On July 15, 1938, the Trust took out \$600 of South Side Service Station bonds for \$90.00, which is what I paid for them, all of which is shown on Schedule 2-M. According to Schedule 2-N, on May 5, 1936 the Trust took out \$5,000 of 22nd Street bonds at \$202.50 each. The Trust apparently still holds the bonds which are selling at par. It paid me exactly my cost. Schedule 2-O shows that on May 22, 1937 the Trust took out \$10,500 Villa Building bonds at \$65.00 per \$1000, which is what I paid for them.

363 I have covered all the securities acquired by Federal with the proceeds of my loans evidenced by Darrow's Exhibits 1 and 2 of March 5. As to National, Schedule 2-J shows that on May 5, 1936 it took out \$1000 of La Grange bonds for \$100, which was my cost.

The Los Angeles bonds were acquired by the Chairman Account and I have no record here on them, but the Chairman Account paid exactly what I paid. They bought \$8500 old par value bonds for \$680.

Schedule 2-L of National shows that \$2000 Ogden Park bonds were taken out May 5, 1936 at \$120 per \$1000, which was the price I paid.

On October 6, 1937, \$5000 of old par Park View Manor bonds were taken out.

National paid for these old par bonds after the reorganization, so actually received new bonds and stock in lieu of the original old par value bonds. The Trust paid \$360, which was my cost.

Interest has been paid on the new bonds.

Interest of \$41.50 was paid on each of the \$300 bonds of Park View (reduced in reorganization from \$500) up to June 1, 1943 and probably \$30.00 since. In interest the Trust has collected more than it paid for the bonds of this particular issue. I have now discussed all the securities bought from the proceeds of the two loans evidenced by Darrow's Exhibits 1 and 2. On March 10, 1939 I made another loan at the First National.

(Photostatic copy of note dated March 10, 1939 in the amount of \$2600, executed by Darrow to the First National

Bank, was marked Darrow's Exhibit 1 of March 18, 1947. The exhibit was received in evidence subject to the standing objection as to materiality.)

I loaned the proceeds of said note of \$2600 to Columbus on the date the note bears. The note was secured by my personal collateral. Columbus was short of money and had a chance to buy \$5000 of its own first mortgage bonds of last maturity.

I thought it a good investment for Columbus to retire its own obligation for 50 cents on the dollar. We purchased these bonds from Colonial for \$2500, and the extra \$100 was apparently used to give Columbus a bank account. I took no note from Columbus, but its ledger showed the loan from me. My note was paid according to the markings upon it on May 2, 1940.

364 The securities that were acquired by Columbus from this loan were turned over to Mosser. The bonds were due January 1, 1947, and the corporation has indicated by letter that it expects shortly to pay par for the bonds. These are first mortgage bonds of a total issue of \$147,000 due January 1, 1947. I bought about \$25,000 to \$30,000 of these bonds at considerable discount for the corporation.

I think that after Columbus bought the aforesaid \$5000 of its bonds with the proceeds of my loan, it bought more of the same issue.

I did not personally receive from Columbus any more than the \$2600 which I had loaned to it. I have now given a complete story of the purchase of securities with the proceeds of the two loans evidenced by Darrow's Exhibits 1 and 2 of March 5.

Interest on the bonds of Columbus is paid up to January 1, 1947 but will accrue to the time of the payment. If Columbus had not acquired the \$5000 of bonds procured with the proceeds of my loan, it would have paid on them interest in the amount of \$2275 although the cost to it was \$2500.

Marquiss kept the books for me as trustee. I personally am not a bookkeeper. I kept records personally involving transactions of National, Federal and their subsidiaries but not of the Chairman Account.

I kept a sheet reflecting the income and the different classes of expenditures for each month. It also showed the cash on hand, money in sinking funds, bonds outstanding, bonds purchased, and a summary of the plans.

(Cards or sheets showing the operating account of Armour Station, including income, expenses, sinking fund, bonds owned by the corporation, bonds outstanding, bond purchases, the plan of reorganization, and the names of people who have offered to sell their bonds at certain prices, were marked Darrow's Exhibits 2 and 2-A to 2-L, inclusive, of March 18, 1947.)

These sheets extend from 1934 to and including 1944 and are in my handwriting. I devised them for my own use as trustee. I obtained the information on them from the books of Federal National and the subsidiaries. The ones just discussed are from the Armour Station books.

I obtained the information regarding prices at which people were willing to sell from letters or personal calls made by such persons. I kept these records because I couldn't understand the C. P. A. system employed by the bookkeeper.

365 (Darrow's Exhibits 2 and 2-A to 2-L of 3-18-47 were received in evidence.)

I have similar records for each of the 27 subsidiaries. Darrow's Exhibit 2 of this date covers the year 1944 to the end of July.

The first column shows the months, and the next column reflects the "Rental Income". The next column headed "Total Expenses" represents the operating expenses for each month. The next column headed "Taxes" represents money paid out for all kinds of taxes. The next column is headed "H. L. W.", representing the amounts paid for heat, light and water.

Since we didn't heat this building, some months contain a blank in this column. I used the same form for all the subsidiaries and filled in the appropriate columns for each. The next column is headed "R. M." meaning repairs and maintenance.

The next column headed "Mgm." refers to management expense. The next column headed "Misc." is for miscellaneous. The next column is headed "Ins." which refers to payments made for insurance premiums. The sheet we are discussing covers 7 months of 1944 and reflects the operations during the last period of my term as trustee.

The next column is headed "Int. Tax." referring to income tax payments. The next column is interest paid to bondholders. After that the sheets reflect bonds bought under two columns, one of which refers to first mortgage

bonds and the other to second mortgage bonds. The next column is headed "Cash E. O. M." which means cash on hand at the end of the month.

Next are three columns headed "Sink. Fund" referring to the sinking fund for first and second mortgage bonds. These columns show the amounts of unpaid but past due interest coupons. The second and third columns after the cash column show how much was on hand at the end of each month in the sinking fund, not how much was put in currently. The figure of \$125 in red for January of 1944 under "Sinking Fund First Mortgage" means that we overdrew the sinking fund to the extent of \$125 for the purchase of bonds.

The next to the last column on the right indicates the amount of unpaid coupons outstanding. The final column to the right reflects the bonds outstanding at the end of the month.

In the bottom left-hand corner, the sheets indicate the amount of bonds outstanding on January 1 of each year, and the ones in the far right column show the amount outstanding each month.

366 (Mr. Mulfinger objected to any documents made up after August 1943 at which time Darrow's trusteeship ended. The Master stated that he thought any records pertaining to the time after Darrow was trustee were not pertinent, and Mr. Herriott agreed. When Mr. Herriott started to cover the same matter for the sheet pertaining to Armour covering the year 1943, the Master stated that the prior testimony concerning Exhibit 2-L might stand as indicative of what appears on Exhibits 2-A to 2-K and that it would not be necessary to repeat the testimony given in regard to Exhibit 2-L.)

Exhibits 2-A to 2-K are identical in form with the heretofore considered Exhibit 2-L. (It was stipulated that the questions put to the witness with respect to the meaning of the headings on each column on Exhibit 2 which covers the year 1944 may be applied to Exhibits 2-A to 2-K, inclusive.)

Where I used the letter "M" I meant \$1000, and where I employed the letter "C" I meant 100's.

I kept similiar records for all the subsidiaries of both Federal and National during my entire tenure of office as trustee.

I kept these records for all of the subsidiaries in my desk at the office. I referred to them several times a day. The only records I kept personally of Federal and National were copies of the income tax return for each year. I have that also for all of the subsidiaries.

(A copy of income tax statements for Federal for the years 1935 to 1943, inclusive, was marked Darrow's Exhibit 3 for id. of 3-18-47, and a copy of income tax statements for National for the same period was marked Darrow's Exhibit 4 for id. of 3-18-47.)

These documents are in my own handwriting, and the information was obtained from the income tax returns filed each year.

(Darrow's Exhibits 3 and 4 of 3-18-47 were received in evidence.)

(A copy of income tax statements for Armour Station covering the period from 1935 to 1943 was marked Darrow's Exhibit 5 for id. of 3-18-47).

367 This exhibit is in my handwriting.

(Darrow's Exhibit 5 of 3-18-47 was received in evidence.)

Exhibits 2-A to 2-K were prepared monthly.

I have income tax sheets that I kept for each of the other 26 subsidiaries similar to Darrow's Exhibit 5.

(In answer to a question by the Master, the witness responded:)

My employees could have had access to these records or could have examined them at any time, but I don't know that they did. It was information that was of value to everybody in the organization, I think. I am satisfied that sometimes these records were examined rather than going through the books because they were easier to get the information from.

368 Hearing before Special Master Archie H. Cohen
March 28, 1947

PAUL E. DARROW

* (Examination by Mr. Herriott)

Besides the records I already testified to regarding the subsidiaries, I kept other data.

In regard to the single occupancy buildings, I had sufficient information on the sheets I produced at the last hearing. However, in regard to many of these buildings I

wanted comparative statements to show how they were running each year in comparison with prior years. I prepared comparative statements of income and expenses starting about 1936 so I could have a close check upon what was being done.

(A document labelled "Comparative Statement of Income and Expense" relating to Austin Station was marked Darrow's Exhibit #1 id. of 3-28-47).

I have similar statements for the years 1940 through 1943 on Austin, Crandon, Ogden, Park View, Rogers Park, and Windsor.

These records were kept on mimeographed sheets. In the right hand column under the heading, "Months", these sheets show the total for the particular calendar month and the cumulative total for that month and all preceding months of the year. I obtained the information contained on these sheets from the Journals.

All the figures are in my own handwriting.

(Darrow's Exhibit #1 of 3-28-47 was received in evidence).

This exhibit shows the comparative income and expense for each month and for the corresponding month of the preceding year.

369 In that way I could tell whether expenses were higher or lower.

(Reports similiar to Exhibit #1 made for the Austin Station for the months of February, 1941, and November, 1941, were marked respectively, Darrow's Exhibits #2 and #3 id. of 3-28-47).

The figures are in my own handwriting and I obtained them from the books.

(Darrow's Exhibits #2 and #3 of 3-28-47 were received in evidence).

Darrow's Exhibit 2 of 3-28-47 is a report which I kept myself for the month of February on Austin. The figure at the top is a rental income of Austin for February, 1941.

The figures in the two left hand columns under "Year 1941" and "Year 1940" represent the total rentals received for that one month in those respective years. The two right hand columns which are headed "2 Months" and underneath that "Year 1941" and "Year 1940" represent the rental income for the two months of January and February for the years 1940 and 1941 respectively. The figures following below under the heading "Year 1940" and "Year

1941" represent the various items of expense for the months of January and February.

In Darrow's Exhibit #1, which concerns itself with the month of January, 1941, I have only the record of one month so nothing appears in the right-hand columns because the figures would be the same. Darrow's Exhibit #3 is a similar record kept for Austin for November, 1941. The two figures at the top of the two columns at the left represent the rental received in November, 1941, and in November, 1940. The other figures represent items of expense in the month of November each year. The figures in the right hand columns from top to bottom represent the accumulated total for 11 months of 1940 and 11 months of 1941, both income and expense.

370 I kept similar records on a similar form for each of the months from 1940 through July, 1943. I started making these records probably around 1936 but the earlier ones have been destroyed because they were too bulky to keep. I kept these detailed records in the cases of buildings which had multiple occupancy.

I refer to these records frequently and thus was able to keep advised monthly as to expenses of these various subsidiaries as well as their income. I have two different forms here and 310 sheets. I assume that about half of the sheets are on one form and half on another.

The other form I spoke of were forms that I got up so I could mail them each month to our board of directors or trust committees to show them what the building was doing. This form showed the expense, income, cash on hand, money in the sinking funds, unpaid coupons, interest payments and information of that type.

I had to supply this different form for the annual report.

(Original monthly statements which Darrow prepared and which were typed and mailed to the boards of directors or trust committees of half a dozen of the buildings were marked Darrow's Exhibits #4 and #5 id. of 3-28-47).

Exhibit #5 covers the month of March, 1941, and March, 1940. Exhibit #6 covers the month of April, 1943, and April, 1942, and the cumulative total of three months in each year.

Exhibit #4 covers the month of April, 1941 and 1940, and the cumulative total of 3 months in each of those years.

(Darrow's Exhibits 4, 5 and 6 of 3-28-47 were received in evidence).

I designed the forms on which these figures appear and had them mimeographed.

All the figures are in my own handwriting. After they were typed they were sent to the various boards of directors or trust committees or both. I kept similar records for other buildings as I had for the Dallas Building which is the one covered by Exhibits 4, 5 and 6. These others are Postal Facilities, Ferry Stations, Park View and 371 Quincy. I kept these records for each month from about 1936 until July 31, 1943.

Reports similar to Exhibits 4, 5 and 6 for the other months and years on Dallas and the other subsidiaries all are in the same form and are now in use by the successor trustee. In relation to Exhibits 4, 5 and 6, February 1 is used as a starting point because it was the beginning of the fiscal year.

I have approximately 150 similar sheets for the other buildings. They go back to January 1, 1940. The prior reports have been thrown away.

I refer to these reports at frequent intervals because I had all the information on those sheets introduced previously as Darrow's Exhibits 2 and 2-A to 2-L. I personally took the figures from the books.

I heard Marquiss testify that I had destroyed some records. I did destroy paid bills but no other records or checks. I threw away some of the records similar to Darrow's Exhibit 1 through 6 of this date prior to January 1, 1940.

I did this because our vault space became crowded. We had books for holding bills and kept therein bills for anything we would buy, ordinary supplies for a building or anything in the nature of a bill or charge to us, and the bills for the 27 subsidiaries, the trusts and the chairman account were kept in separate books. I never destroyed any leases or contracts.

I believe the routine bills I destroyed covered items prior to January 1, 1937 which was the cut-off date. I considered the bills destroyed of no consequence.

All bills were paid by check. Some of the bills went back as far as 1920 and included those of Kulp & Co. I filed a petition in the Kulp Bankruptcy, seeking the right to offset claims of various subsidiaries against claims of Kulp & Co.

The prayer of the petition was denied. As trustee I purchased various securities on behalf of subsidiaries and the trusts from various persons including Colonial and Myrtle Johnson.

At the time I did not know what Colonial or Myrtle Johnson had paid for the securities and I made no inquiry.

I arrived at the price I paid by examining Exhibits 372 2 and 2-A to 2-L of 3-18-47 and similar sheets which show bonds purchased, dates and prices and if Miss Johnson or anybody else offered me a bond I would ascertain the last price paid and unless some change in the financial condition occurred, I would pay the same price. As I previously stated, these sheets contained names of bondholders who had offered bonds to me and the prices at which they had offered them. If the price ever got to that figure and if the people were still willing to sell, I would buy the bonds.

In same instances the prices at which subsidiaries would buy bonds were fixed by the board of directors or trust committees and I never exceeded the authorized price. In 1938 I bought from Myrtle Johnson securities that were sold at a master's sale in the Seligman case.

Prior to the time I purchased those securities I did not know that she herself through an auctioneer purchased the same securities at a master's sale. At that time she offered the securities to me as she had many times in the past and I referred to my sheets to find out what prices we had been paying if I didn't know offhand and I made a deal on those that I had money enough to buy. I think I paid her about \$12,000 for the securities.

It appears from the record that Miss Johnson through Tauber & Co. bought at that sale the securities which I later acquired and other securities and she paid about \$25,000 for the entire group. At the time I made the purchases from her I did not have \$25,000 available in the trusts or subsidiaries. I knew of the Seligman case.

My attorney said he would ask the court for permission to bid and later advised me that I could not bid. While I was trustee of Federal and National I never made any profit on the purchase or sale of any securities of the trusts or their subsidiaries.

The securities which Louis Goldman previously stated were in a certain safety deposit box were securities of National and Federal purchased at the master's sale in

the Seligman case. I never had any claim as trustee or individually in any of the securities in Goldman's safety deposit box.

My conclusion that I had no interest is not predicated upon legal advice.

373 I don't believe I had any knowledge of bonds placed in a vault in a certain bank before I heard Goldman testify. I paid no attention to the transaction other than to the extent that I purchased securities from Miss Johnson. At the time I was appointed trustee there was an income tax claim of approximately \$150,000 against Federal. The prior trustee had employed accountants to oppose the claim which was for 1931-32 and they had never gotten anywhere.

The claimed depreciation but I felt a claim for obsolescence should have been made. We first ascertained that obsolescence would accrue in 1931 which was prior to my time, when the Government refused to pay the rent that was considered reasonable on Station D which was built especially for the Government for a post office. This gave us the first information that our especially built post office buildings were of no more value or possibly of not as much value as ordinary store buildings.

Thus I claimed there should be obsolescence figured in for income tax purposes. I talked it over with Mr. Kulp who agreed with me and began to study the decisions of the income tax department. I learned that the Government did recognize obsolescence on the basis I wanted, particularly in prohibition cases.

Mr. Marquiss and I handled the matter entirely. The income tax examiners said we were foolish but we worked up our case and filed amended returns showing obsolescences. Finally a Government man whom we took through the building said he thought we had something of an argument and he allowed us obsolescence for the balance of the post office lease in and after 1937.

However, I wanted obsolescence from 1931 when we first got notice that a post office building was of no particular value to the Government. We went to Washington and were allowed the full obsolescence which I claimed from 1931 to the expiration of the lease.

374 We had deposited about \$150,000 in cash and we got back after that decision approximately \$130,000. They allowed us, in addition to the claim on obsolescence, a

claim for bad debts which I had made and which had previously not been raised.

The recovery of the \$130,000 in income taxes was not reflected in my final account but is shown in the books.

PAUL E. DARROW

(Cross Examination by Mr. Roberson)

I still have a connection with Crandon, Park View, Rogers Park and Windsor which are four of the six subsidiaries covered by my sheets similar to Darrow's Exs. 1 to 6 of 3-28-47. I have kept these records of income and expense up to date for these four corporations since my resignation as trustee.

I am presently associated with Crandon, Park View, Rogers Park and Windsor as president, treasurer and manager of each and I kept these records that were introduced as Exs. 1-5 at the last hearing and as Exs. 1-6 of this date, With the object in mind of doing whatever would be of benefit to the security holders and of saving them money I kept those records.

I presume these and similar records are trustee's records and I regard them as my property only to the extent no one was interested in them. I am willing to turn all these records over to Mosser on any property he is handling.

Mr. Mosser never requested these records of me but I think I tendered them to him, and he said he didn't care anything about them.

Since my resignation as trustee I have had occasion to consult a few of these records in relation to the subsidiaries under my charge. I think on several occasions after my resignation Marquiss, or somebody from his office, asked me for information which gave me occasion to refer to these records. After I resigned as trustee these records were available for use of anybody else in my office just the same as before I resigned.

Kulp and Miss Johnson had access to these records after I resigned but I don't know that I ever referred to them except on the buildings that are directly under my 375 supervision. Since I resigned, so far as I know, Kulp or Miss Johnson did not purchase any securities of these four corporations personally.

Miss Johnson has bought some for the companies but not personally.

I don't know whether Kulp or Miss Johnson or Colonial or anybody associated with them has purchased any bonds of any of the subsidiaries since my resignation. Miss Johnson and Mr. Kulp are officing with me and to the extent that they are officers of Colonial, Colonial is officing with me if it has not been allowed to lapse. My office is at Room 911, 100 West Monroe Street.

Kulp and Johnson have had access to the records I made as trustee and also a bookkeeper and stenographer. There are a total of 374 sheets similar to Darrow's Exs. 1-5 of 3/18/47.

One sheet in each of the 27 sets contains records of potential sellers, their holdings of bonds and the prices at which they are willing to sell. If there wasn't one such sheet for each of the 27 subsidiaries, certainly there were 20 or more of these sheets regarding potential sellers.

The sheets introduced today I am keeping on Crandon, Park View, Rogers Park and Windsor; the small sheets introduced previously as Exs. 2 to 2L I am keeping up on those four and I kept them up on Los Angeles until it was sold in October. I am keeping current only on those five. I think the cutoff date prior to which I destroyed certain bills for supplies and things of that kind and this was done in the summer of either 1939 or 1940.

I had filed a current account as trustees covering the period to which these bills referred in National and not in Federal. The petition which I filed in the Kulp & Co. bankruptcy case to assert a setoff against Kulp & Co. was withdrawn and later an amended petition filed but the latter was denied according to Burke Williamson, my lawyer. I think that at the time I acquired from Miss Johnson securities purchased in the Seligman case I knew where she had acquired them. I do not believe I had ever purchased from Miss Johnson at any other time as large a block of securities. I am satisfied that at many other times I paid Miss Johnson in advance the purchase price of securities prior to her purchase of the securities.

It would have been done any time she asked me. I do not think over a week ever elapsed after I paid her before I received the securities. However, on one occasion in the case of Columbus it took three to six months before I got them but in the meantime she gave me other Columbus bonds of twice the value.

I do not think there was any discussion between Miss Johnson and me regarding the reason for paying her in advance but I don't remember.

I did not at any time inquire from her from whom she had acquired the securities she was selling to me or the date that she had purchased them. It did not occur to me that she or Colonial might have been selling the securities at a greater price than they had paid for them. I never had a conversation with Miss Johnson or Kulp to the effect that the securities were being sold to me at more than the price paid for them.

I do not believe I ever knew that people called at the office trying to sell bonds to Kulp, Miss Johnson or Colonial. Many times they came into the office to sell securities and I thought I was buying most of them. I didn't think I was buying all of them but I don't know of any specific instance and I don't think anybody ever told me that a certain party was just in to try to sell a bond. I would guess that bondholders came into the office two or three times a day. I believe that for the first three or four years I never saw them except a few times when Miss Johnson would be out. People came in to see Miss Johnson and they didn't come in to see anyone else. They still come to see her and very seldom to see anybody else. They know her, have done business with her for years and know what she tells them is all right.

As time went on they probably came in to see me often. I knew that Colonial was in the business of handling securities of all kinds, including those of the trusts and their subsidiaries. I had no reason to believe when I was buying bonds from Colonial, Johnson or Kulp that the securities had been held by them from a time prior to that of my becoming trustee.

I didn't know whether they acquired the securities before or after I became trustee. I didn't know I was buying from them when I bought from Colonial. I had no idea from whom I was buying. When I buy securities on the New York Exchange or from an unlisted security dealer, I never ask whom they are coming from. When I bought bonds from Miss Johnson and Colonial I didn't know whether they were acting as agents for some unknown principal.

377 I was buying from Colonial and I treated it the same as if it were a house located in New York or

some other place in Chicago. I thought I had the same connection with it, entirely separate and distinct, and I knew that Colonial was operated, owned and controlled by Miss Johnson and Mr. Kulp.

I would say there were seven or eight subsidiaries for which trust committees or the board would fix a maximum price at which the subsidiary would buy its bonds for retirement. I had discretion to pay less.

When Miss Johnson or Colonial would offer me a bond I think she or Kulp would know that maximum price. I don't think we would have a discussion as to whether I could obtain any of these bonds for less than that maximum price because I don't remember paying the maximum price as a rule. Once in awhile we would clean up the market, no bonds would be offered and I would get authority to raise the price but Miss Johnson never got more than other people who had been selling. Very seldom did we pay the maximum price. Those little sheets which were introduced a few days ago show the prices that were paid.

I don't remember paying any more than the last price to Miss Johnson in any instance. Aside from my sheets Miss Johnson knew offhand the price at which bondholders were offering their holdings. I think Miss Johnson also knew the information with respect to offers at which bondholders were willing to sell, notations of which were made on my sheets in cases where there was no fixing of a price by a committee or a board. She could have, anyway.

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Hearing Before Special Master Archie H. Cohen
April 10, 1947

PAUL E. DARROW

(Cross Examination by Mr. Mayer)

Probably between a week and a month after my first appointment as temporary trustee, I had my first meeting with Williamson or Adams or both, at which Miss Johnson or Mr. Kulp was present. I discussed with Adams the question of permitting Kulp to continue writing the insurance only to the extent that Adams asked if Kulp was writing the insurance and how much his commission amounted to, and Miss Johnson and Kulp both said they would be glad to continue working for me as they had for Andresen providing they could take care of their own

business of insurance and buying and selling securities as they had with Andresen.

They would give me all the time I needed but they could not afford to work for me as their only source of income. I would guess that I met Miss Johnson and Kulp on April 25 or 26, or very shortly after my appointment as temporary trustee and before the first meeting with the attorneys, Miss Johnson and Kulp. I had not known them previously.

I don't know whether thereafter I ever discussed the question of retaining Miss Johnson or Kulp in my employ with my attorneys but the attorneys knew these parties were working for me. I was advised by my attorneys to dispense with the services of Miss Johnson and Kulp.

When I asked Adams why I should dispense with their services he said if they remained they would gradually take these companies away from me and neither of us would have any income from them. I believe Adams gave me this advice within six months or a year after my appointment.

It was never called to my attention by my attorneys that since Miss Johnson directly and for Colonial was dealing in bonds of subsidiaries, I should dispense with her services. Nor was I ever advised by anyone else to dispense with the services of Miss Johnson or Kulp, and I retained them until my resignation. Kulp continued to write substantially all of the insurance on the properties of the subsidiaries (as a broker).

The loans which I had previously testified I had made from the First National Bank for the purchase of bonds were not repaid by me out of my own funds either as to principal or interest. I think it is correct that immediately after the loans were made, the trusts were immediately charged on their books with the amounts that I borrowed as accounts payable to me.

I turned the bonds over to the trusts as the money was paid back. I suppose I was holding the bonds in the nature of security until the amounts were paid that I owed to the bank on the loans. A number of the bonds increased in value subsequently but in one or two instances they decreased in value.

I always thought someone might object to the purchase of bonds and I always was in the position to take out the whole block and replace the money that was advanced

so the trusts would not suffer any loss. I haven't checked up, but I presume that the amount advanced was carried as an obligation to the trusts on their books.

However, as I think of it, I don't believe the trusts showed on their books any obligation to me but only the payment to me for certain bonds.

At any rate I considered that I would get my money back.

I thought I had a perfect right to buy and sell securities to the trusts or anybody else if I handled it reasonably and by that I mean if I did not charge them more than they were paying for securities of the same kind at the same time.

It was my opinion that I had a right to deal in these securities selling them either to the trusts or subsidiaries and earn a profit. (I (personally) didn't do any trading out of consideration for Judge Holly and my father.) I realized it would be a dangerous practice because somebody would try to show that I had been unreasonable with my dealings in the trusts. Adams, my attorney, never told me at the outset that I should not personally deal in these securities.

I did not discuss it with him at all. I have been trustee in other cases and I never procured personal profit.

I considered it appropriate to permit Miss Johnson, Kulp or Colonial to trade in bonds of the subsidiaries for a profit. I had talked with almost every lawyer in the picture and explained to them that Miss Johnson and Mr. Kulp were on a part-time basis with me and only on condition that they could handle their own securities business and other work. Whether the profit they realized in transactions with me was reasonable or not was of no consequence to me. The important thing was that I did not pay them more than I was paying anybody else.

I discussed the matter with my father and Mr. Goldman. I told Judge Holly shortly after I had made the arrangement with Miss Johnson and Kulp that it was on a part-time basis, that I was allowing them to handle their own insurance, real estate and securities business.

I also discussed the matter with Joseph T. Harrington and Fred Silbert.

I also talked about the matter with Adams and Williamson and probably with Norman Miller.

I told these parties that I mentioned that Miss Johnson and Kulp would work for me providing they could engage in the securities business. My impression is that I didn't tell them specifically that Kulp and Miss Johnson would be dealing in securities of the subsidiaries.

At the time of my first meeting with Kulp and Miss Johnson and my attorneys, I didn't know that Colonial or Miss Johnson was trading in securities of the subsidiaries. I don't know when I first learned that they were trading, but it was probably early in the proceedings. After I found out about their trading I don't know that I ever specifically discussed the matter with Adams or Williamson and I probably did not.

I think the cutoff date on the bills that I destroyed was about January 1, 1937.

At that time I had not filed an account in relation to Federal covering the period for which I had destroyed the bills. During my trusteeship I did not file monthly or annual reports or accounts in either estate. I purchased bonds from Colonial and from various other bondholders outside of those who were associated with the operation of the trusts.

I knew that Colonial was conducted by my employees and I did not inquire or know what profits were made by Colonial or Miss Johnson. I now know that certain profits were realized by Miss Johnson and Colonial.

I did not know when I made purchases of bonds from Colonial that those bonds in some cases had been
381 purchased by Colonial on the same day or within a few days previous thereto. I knew that Miss Johnson was well acquainted with the bondholders and most of them asked for her and conferred with her when they called at the office. At the time I did not know whether Miss Johnson actually made purchases of bonds from bondholders for the account of Colonial in my office and later sold them to me at a higher price.

In relation to the securities that I purchased from Lot 1 in *Seligman v. Kulp* I think the testimony of Miss Johnson was true to the effect that I knew these securities were a part of the securities sold at the Seligman sale and purchased by Tauber & Co. at that sale.

I probably learned the source of these securities between the time I agreed to buy them and the time they were delivered, but I am guessing on that. I probably

said something different previously but Miss Johnson's memory is better than mine if she previously said that she told me that Tauber's office had purchased a block of securities on her behalf, that statement is true. Prior to my purchase of these securities of Lot 1 I did not discuss the matter of purchasing these securities from her.

I think Miss Johnson was correct when she testified that prior to going to the sale in the Seligman case she had a printed list of the securities which were going to be offered for sale and that after the sale, but before its confirmation, she discussed those securities with Darrow.

I don't believe that prior to my resignation as trustee I knew of the existence of the safety box in which certain securities were placed by Goldman.

I believe I first learned of it when he testified here. I don't believe I knew who held or claimed these securities at any time from the date of sale by the master up to the time of my resignation.

382 PAUL E. DARROW

(Cross Examination by Mr. Mulfinger)

I would guess that I discussed the employment of Miss Johnson and Mr. Kulp with Judge Holly maybe within 30 days or within ten days after my appointment. I told him that they had been associated with the trusts prior to that time. I told him they would give me all the time that I needed to run the business and that they were to be permitted to be engaged in the buying and selling of securities.

I don't believe I told him that as part of the agreement they were to be permitted to engage in buying and selling securities of the top trusts and bonds of subsidiaries. When I employed Miss Johnson I had no idea what securities she was going to handle but I knew she had handled securities of the trusts as well as other securities. It was agreeable to me that she handle securities of the trusts and the bonds of the subsidiaries. I was not surprised when I learned that she was dealing in those securities and bonds.

I learned that they were dealing in securities of the top trusts and bonds of the subsidiaries early in the administration, probably within a month. I did not then

discuss it or tell that fact to Judge Holly. I told him that Kulp was to be permitted to retain a Commission from insurance sold on buildings of the subsidiaries and he said that was all right.

I told Judge Holly that Miss Johnson and Kulp could not afford to work for me as their sole source of income and that they would do so if Kulp could continue his insurance, securities and real estate business.

I told Judge Holly later it would disrupt the organization if I didn't continue that arrangement on the insurance and he said it was all right. I don't remember whether I told Judge Holly that I was paying Kulp \$300 a month after I started the salary or before.

Norman Miller, who represented the petitioning creditors, did not request me to disassociate myself from Miss Johnson and Kulp. I doubt that I told Judge Holly that Colonial was to continue to occupy the same space with me. A few days or a few weeks before I resigned I was requested by members of the S.E.C. to disassociate myself from Johnson and Kulp.

I previously testified about a deficiency income tax assessment on Federal of about \$150,000 for two years which I believe were 1931 and 1932. Andresen filed 383 the protest but nothing was ever done on it until I followed it up.

I developed the theory of obsolescence which was advanced to the Treasury Department. I made an extensive search of the law.

I offered to Mr. Mosser the sheets similar to Darrow's Exhibit 2 of 3/18/47.

That was probably within a week or two after we moved out of the office. We moved in August 1944.

That was about a year after I resigned. I think that prior to that time he knew I had these documents because he asked me to make up the monthly reports as long as I was in the office and I needed these records to make the monthly reports.

Mosser told me he didn't want my records. After I resigned as trustee I didn't think I would need the names and addresses of bondholders who were willing to sell their bonds of the subsidiaries. I didn't take any lists of bondholders with me when I left the office. I don't know whether Miss Johnson or Kulp did. I have seen in my office a list of bondholders of the various corporations which I manage.

So far as I know I do not have in my office lists of the security holders of the top trusts. I never instructed Miss Johnson that when people came in to sell bonds of subsidiaries she should send them to me because I was buying them. I never bought bonds of the subsidiaries for the trusts when the subsidiaries had money to retire those bonds.

According to my personal records there was no money in the sinking fund of Ferry on April 30, 1938, but it was overdrawn by \$7,593.23. The company then had \$22,960.28 in cash on hand. I don't know whether in May of the same year I bought from Miss Johnson some Ferry bonds that came out of the Seligman case on behalf of Federal.

Trustee's, Exhibit A for id. of 1/3/45 is in my handwriting except for personal notations at the bottom.

It contains a list representing the securities which were purchased from Miss Johnson and which came out of the Seligman case. I purchased some Ferry bonds from Miss Johnson which came out of the Seligman case. These bonds were second mortgage bonds in the face amount of \$25,200, and I paid \$126 for the entire block.

384 Ferry then had cash on hand in the amount of \$22,960.28. Exhibit A shows that I purchased from Villa Garage bonds which came out of the Seligman case from Miss Johnson. They were first mortgage bonds in the face amount of \$3,000, and I paid \$95.55 for the lot which was purchased for Federal.

On April 30, 1938, Villa Garage had on hand \$648.44 and on May 31, 1938, it had \$457.90. At that time I purchased from Miss Johnson on behalf of Federal some first mortgage bonds of Roseland which came from the Seligman case. I paid \$9.00 for a total of \$300 in bonds. On April 30 Roseland had cash on hand of \$2,357 and on May 31 it had \$2,179. There were some Windsor bonds included in the Seligman lot.

I don't remember whether there were some bonds of Station F (postal). An examination of S.E.C. Exhibit 2 does not refresh my recollection as to whether or not there were some postal or Station F second mortgage bonds included in the Seligman sale. As I previously testified I had a list of securities that were to be sold in the Seligman case. At the time I purchased bonds from Miss Johnson which came out of the Seligman case I presume I had the information as to what bonds were sold in the

Seligman case but I didn't know offhand what those bonds were. I had a list but I don't always remember every item on the list. I probably didn't refer to the list at the time

I bought the bonds from Miss Johnson.

385 Hearing Before Special Master Archie E. Cohan
April 17, 1947.

PAUL E. DARROW

Cross Examination by Mr. Mulfinger.

Referring to my records I find Station F did not purchase any of its own bonds during May 1938. In June 1938 it bought \$3,000 of its first mortgage bonds for \$2,030.

6929 North Clark, referred to here as Rogers Park, purchased in May 1938 \$9,500 face amount of its bonds for \$3,275. Windsor Shore purchased in May 1938 5,000 of its bonds for \$1,000.

I did not keep similar personal records pertaining to the two trusts. I kept records showing the income tax returns of the two trusts for the years 1935-43.

PAUL E. DARROW

Examination by Mr. Herriott.

When I bought second mortgage bonds of Ferry for Federal I didn't buy any for Ferry. Ferry had some cash in its general account and none in the sinking fund. I bought part of these second mortgage bonds for Ferry because the plan of reorganization said that no second mortgage bonds are bought at any time until all the first mortgage bonds had been paid, and there were then some \$500,000 in first mortgage bonds of Ferry outstanding.

I bought \$3,000 of Villa Building bonds for Federal but although Villa had some cash on hand it had been losing money, I didn't want to deplete its cash. Among the securities purchased on May 19, 1938, from Lot 1 were \$300 par value of Roseland bonds.

Roseland was in reorganization and I thought it improper to use the company funds for buying bonds because that might be preferring one creditor against another.

According to trustee's Exhibit A for id. of 1/3/45, \$2,000 of Windsor bonds were purchased by National for \$400; \$9,400 by the Chairman Account for \$1,880 and \$5,000 by Windsor for \$1,000.

At the end of April (1938) Windsor had \$3,092 on hand and at the end of May it had \$1,209 in the general 386 account. At that time some interest was coming due.

I didn't buy any more of these bonds at the time for Windsor itself because I thought we would be short of money with back taxes and interest to meet.

At the first of November we were overdrawn a small amount.

Trustee's Exhibit A for id. does not show that I purchased any of the bonds of postal for either the trust or the Chairman Account. Said exhibit shows that Rogers Park bought some of its own bonds and the top trusts did not buy any of the Rogers Park bonds.

I don't think Miss Johnson offered me any postal bonds in May 1938 but at any rate postal couldn't buy any of its own second mortgage bonds under its plan until the first mortgage had been reduced to \$250,000. They had not been so reduced on May 19, 1938.

The list of securities contained in Trustee's Exhibit A for id. of 1/3/45 shows only the bonds that I bought and not the bonds that I did not buy. While I was acting as trustee I purchased \$2,741,390 par value of bonds for the trusts, subsidiaries and the chairman account.

I also purchased 300 shares of Station D and 41,920 shares of Park View Class A preferred, all of which stock went to the chairman account. The total cost of said bonds and stock was \$983,684.94. In May or June 1943 Hart, who is in charge of the S.E.C. office in Chicago, advised me to discharge Kulp and Miss Johnson. He so advised me in his office in Chicago. He said I had been allowing Kulp and Miss Johnson to make a profit in securities, that I would have to resign and if I did not, they would start action to remove me. He said while he didn't have anything on me that didn't mean he wouldn't get something on me.

He added that if I discharged Kulp and Miss Johnson he would be satisfied to have me remain as trustee. I agreed to start suit against Kulp and Johnson as he desired. He said he wanted a suit started against Kulp and Johnson and I agreed to start it but I pointed out that I had to keep Kulp and Johnson as long as I remained be-

cause I needed them for the business. He gave me a certain deadline to make my decision.

When I talked with Hart, Roberson was present.

The representatives of the S.E.C. in Philadelphia also asked me to discharge Miss Johnson and Mr. Kulp but I don't remember who they were.

387 I didn't discharge Miss Johnson and Kulp. I am not familiar with the income tax protest filed by Andersen.

Based on market value at the date the securities were taken out, the securities purchased with the proceeds of my loans from the First National Bank had a total value of \$18,845 at the time they were taken out. The market value was either the last sale before they were taken out or the first sale afterwards. I got my information as to the sales prices from Andrews' report.

PAUL E. DARROW

Cross Examination by Mr. Roberson.

When I previously testified that my attorneys had not advised me to dispense with the services of Miss Johnson because she was dealing with bonds of the subsidiaries, and when I said I was never advised by anyone else to dispense with the services of Miss Johnson or Mr. Kulp, my statement was true to the extent that nobody ever suggested it until after they had stopped trading and I think nobody ever suggested it until my conversation with Hart.

When I had the alleged conversation with Mr. Hart, I did not know the trading was going on in the securities by Miss Johnson and Kulp. I would say that they stopped trading in these bonds prior to 1940 but the Andrews' report should give the answer. I think I learned that they had stopped trading at about the time their trading ceased.

I learned that fact when Miss Johnson told me they were not going to re-register as security dealers. That fact coupled with the further fact that I didn't buy any more securities from Colonial, and I think from Miss Johnson and Kulp, is the basis of my statement that they stopped trading.

My conversation with Mr. Hart took place in May, June or July of 1943. At that time I was not represented

by an attorney named Mr. Kelly but I subsequently retained him.

His name is John Kelly and he is from New York City. He recommended that I dispense with the services of Miss Johnson and Kulp. Mr. Hart said if I would dispense with the services of Miss Johnson and Kulp he would have no objection as to my continuing as trustee.

Robert McCormick Adams was my attorney until I resigned as trustee and during the time that I consulted with Mr. Kelly. Adams did not refer me to Kelly.

388 PAUL E. DARROW

Redirect Examination by Mr. Herriott.

I paid Kelly a fee out of my own pocket. He advised me to dispense with the services of Miss Johnson and Kulp between August 1 and August 13, 1943.

He had then been retained by me for about 60 days and had participated in about six to ten conferences with the S.E.C.

Kelly advised me to discharge Miss Johnson and Kulp the last time I saw him in Philadelphia.

He had two conferences with the S.E.C. at which I was present and he said that he had had several others. There were no more conferences with the S.E.C. after he advised me to discharge Miss Johnson and Kulp.

PAUL E. DARROW

Cross Examination by Mr. Courshon.

I first consulted Kelly in June or July of 1943.

I was prompted to consult other counsel because I think Adams told me he wouldn't be the proper one to see the S.E.C. with me.

The Andrews' report had been completed about two years before I first consulted Kelly in 1943. I had consulted Adams with respect to a plan and we worked toward one for a long time. We had one completed for National but about that time the S.E.C. came into the picture and stopped it in 1941. I did not petition the court for leave to consult counsel other than Adams.

Adams did not indicate that he wanted to resign as my attorney prior to my consultations with Kelly.

PAUL E. DARROW

Cross Examination by Mr. Roberson.

I did not file a plan before the S.E.C. became a party to the proceedings. The plan was substantially agreed to by all the attorneys but when the S.E.C. appeared the attorneys decided it was better to forget the plan until they knew more about what the S.E.C. was going to do. In the case of National a plan had been agreed upon.

We hadn't gotten far enough to discuss a plan in Federal.

389 PAUL E. DARROW

Cross Examination by Mr. Mulfinger.

I first learned that there was some complaint about my administration of the estates when Hart called me to insist upon my resignation. I knew that an order had been entered directing Andrews to investigate the two trusts.

STACY C. MOSSER

Cross Examination by Mr. Herriott.

My name is Stacy C. Mosser and I am trustee of Federal and National.

I have so acted since August 13, 1943. The following subsidiaries of National are under my supervision: Armour, Austin, Berwyn Division and LaVerne, Grand Rapids, LaGrange, Ogden Park and Postal. The following subsidiaries of Federal are being administered by me: Chicago P.O.; Columbus, Dallas, Ferry, Irving Park, McKinley Park, North Halsted, Quincy Station, Roseland, Southside P.O., Station D, 22nd Street, U. S. Building and Villa Building.

As trustee I keep the books of account and employ Mr. Marquiss as accountant. I don't keep the books myself nor do I keep any separate personal records for the trusts or the subsidiaries. I have not personally made or kept any records similar to Darrow's Ex. 2 of 3/18/47, Exs. 2, 2-A to 2-L, 3, 4 and 5 of 3/18/47.

I have made memoranda for my own personal information at the time. I never saw these or any similar records prior to coming in here to testify except that I think Mr.

Mulfinger had them in my office and I just glanced hurriedly at them. I dictate and keep the corporate records or minutes of meetings. That is about all. I keep memoranda, of course, and copies of reports to which I refer.

I keep the memoranda I make only temporarily when I am thinking over things. My memoranda are temporary notes.

I have a file of monthly reports of each company and a lot of data about the plans etc. in a book on my desk. That is made up by me and kept made up and I refer to that. I don't keep any records such as Mr. Darrow kept.

STACY C. MOSSER

Cross Examination by Mr. Mulfinger.

Darrow did not at any time offer to turn over to me his records similar to Exhibits 2-A to 2-L, 3, 4 and 390 5 of 3/18/47.

After I was appointed trustee I instructed my employees about the records that were to be made up. In addition to the records which Marquiss keeps I have my girl make up the book of records I just mentioned. It contains an outline of the plan in each case, the amount of bonds and due date and what we should do with our proceeds.

The book has the latest statements and usually a list of the leases on the property. If I want to know how much the company has in the bank, I go to the books.

PAUL E. DARROW

Examination by Mr. Herriott.

I testified that the total market value of the securities which were purchased with the proceeds of my personal loans later paid by the trusts was approximately \$18,000.

(A schedule prepared by Darrow with respect to each of the bond issues showing the value of each of the bonds at the time they were paid for by the trusts was marked Darrow's Ex. 1 of 4/17/47. The exhibit is entitled "Securities Purchased by Mr. Darrow with Proceeds of Personal Loans made in the First National Bank, Aggregating \$11,462.50 and Their Market Value at the Dates Loans Were Paid and Securities Delivered by Mr. Darrow based on the Prices Being Paid for Similar Securities at Such Dates or the Next Purchase of Similar Securities.")

The figures shown as to the market values opposite each of the bonds on said exhibit were obtained from the same source which I testified to when I gave the total figure on the market value.

(Darrow's Exhibit 1 of 4/17/47 was received in evidence.)

PAUL E. DARROW

(Cross Examination by Mr. Roberson)

I didn't personally prepare Exhibit 1. Miss Johnson prepared it for me. The figures in the righthand column as to the market value as to the dates the loans were paid were taken from the Andrews' report.

We took figures from Andrews' report on sales 391 which were the closest dates to the ones in which we were interested. I think the Andrews' report purports to cover only transactions by Colonial, Miss Johnson, Kulp, myself and the subsidiaries, and it doesn't necessarily represent the market value but only the prices being paid as reflected in the Andrews' report.

(Courshon objected to Darrow's Exhibit 1 on the ground that it does not establish market value of bonds as of the date they were taken over by the trusts. The Master stated that the point was well taken and that the exhibit doesn't show the market value generally. The Master stated that the exhibit would be stricken physically.)

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Hearing before Special Master Archie H. Cohen
May 28, 1947.

THOMAS B. HART

(Examination by Mr. Roberson)

My name is Thomas B. Hart. I reside in Highland Park, Illinois. I am an attorney and Regional Director of the Chicago office of the Securities and Exchange Commission.

I know Paul E. Darrow. I recall a conference in my office in May or June, 1943 with Mr. Darrow at which Darrow, Roberson and I were present. Prior to this time the Commission had been participating in these estates and had made certain investigations.

At this conference I told Darrow that we were going to file a petition asking for his removal as trustee. He said he was sorry but that he would like an opportunity of discussing the matter with his counsel. I told him that was all right but added that our action was not to be construed as a threat, but something we would do after authorization by the Commission.

Neither at that conference nor at any other time did I tell Darrow that we did not have anything on him, but that we would get something on him. I don't think I spoke to Darrow more than two or three times and this was the first occasion. Late in May or early in June, 1943. I never told Darrow at that conference or at any time, that if he would discharge Miss Johnson and Mr. Kulp that the Commission would not file a petition for his removal.

At that conference I never made the statements ascribed to me by Darrow at page 2423 of the record, to the effect that he knew all the publicity he would get if we started after him and it would embarrass Judge Holly, and further that while we didn't have anything on him that doesn't mean we wouldn't get anything on him and he would probably have to pay the profits that they (Kulp and Miss Johnson) made on securities and insurance, and that the best thing for him to do was to resign. Neither did I say at that conference that if he wanted to discharge Kulp and Miss Johnson we would be perfectly satisfied to have him remain as trustee. I never made such statements at that time or at any time.

393 THOMAS B. HART

(Cross Examination by Mr. Herriott)

I believe Darrow came to my office at my request. I asked him to call at the office because in a matter of this kind where we are going to file a petition for removal, we felt we should advise him before we actually proceeded. At my conference with Mr. Darrow, we discussed our proposed petitions for his removal. He was in the office only a few minutes. He said he was sorry we were taking this position and he wanted to confer with his counsel. That was the substance of the conversation.

The names of Miss Johnson and Mr. Kulp were mentioned in the petitions. About a dozen of the paragraphs dealt with the dealings of the trustee. I went over all of the allegations in the petitions with him. I said the results of the report made by Andrews and the investigation by our accountants would indicate that certain of the employees were trading in securities of the trusts, probably at a profit to themselves.

I think I stated that he had been in as trustee for 8 years and had filed no Sec. 167 reports. There was no interim report in one case at all and one in the other. I pointed out there was no indication of a plan being filed and that together with the trading by the employees, warranted the Commission's contemplated action. I did not intimate to him that he should discharge Miss Johnson or Mr. Kulp. I believe Darrow, Roberson and I were the only ones present at the conference. The only comment Darrow made was that he was sorry the Commission was going to take this action. I don't think he was in the office more than 20-25 minutes.

A great part of the time was spent in discussing the paragraphs in the two petitions. When we finished we had this discussion where he said he was sorry the Commission felt that way. I don't remember whether it was at this meeting or another meeting, but he intimated that he had a great deal of confidence in Johnson and Kulp. There was another conference but I don't remember whether I was present. I remember meeting Darrow once on the train coming back from Philadelphia. After that Bob Adams came in to discuss the matter. Shortly thereafter, new counsel was in and out of the case, but I did not have much to do with that. Mr. Roberson and George Launtenbach, an accountant, worked on it.

394 My recollection is that at the time we discussed the petitions, he said he had confidence in these two people. His statement may have been brought about because the petitions indicated that they were trading in securities of the trusts and in reading the petitions perhaps Darrow thought it necessary to state that. I have given all the conversation I recall that took place at that meeting, or at any other meeting between Darrow and me. Any further discussions would have been on whether the petitions would be filed then or later. I think that sometime in August Roberson indicated to Adams that we were going to file the petitions.

I think that thereafter Darrow telephoned Roberson stating he was going to resign but he would like to await the return of Judge Holly to the city. We indicated that was the situation, we would hold the petitions. The petitions requested the removal of Darrow as trustee, contained a prayer for the filing of a final report and account and a prayer for general relief.

As I recall, Darrow made no comment as to whether the allegations of fact were correct or incorrect, but said he wanted to discuss it with his counsel. He did not have his counsel with him but there was no request that counsel should not be present. Mr. Adams would have been welcome but he was out of town. Shortly after that, Adams and Roberson communicated with each other. I never stated to Darrow that one reason we wanted him removed was because we wanted a trustee who would file a suit against Kulp and Miss Johnson. That suggestion was never discussed.

I do not recall Darrow saying that he would start it and if I did not want his attorney to prosecute the case it could be filed in his name and any other attorney could prosecute the case. There was an attorney named Mr. Kelly from New York who came in and discussed the matter. The number of discussions I had in the case was very limited. To the best of my recollection, all that Darrow said during this conference was that he regretted that the SEC was going to take this action.

ROBERT McCORMICK ADAMS

(Examination by Mr. Roberson)

My name is Robert McCormick Adams and I reside at 2430 North Lakeview Avenue, Chicago. I am an attorney and my law firm acted as attorneys for Darrow, as trustee, from April 1935 until December 1943 or the spring of 1944. I actually retired as attorney when Mosser came in except for a few matters, which I finished up.

395 I know Paul E. Darrow and Mr. Hart.

I saw Hart as Darrow's counsel subsequent to the above discussed conference between Hart and Darrow. At my conversation with Mr. Hart, nothing was said about any threat. Darrow related to me the conversation with Hart. At the conferences attended by Darrow, Hart, and myself, nothing was said by Hart to the effect that the

SEC had nothing on Darrow, but would get something on him.

At the conferences attended by Darrow, Hart and me, Hart did not say that if Darrow would discharge Miss Johnson and Mr. Kulp the Commission would then file a petition to remove Darrow as trustee. I think that later that when we were coming down to a decision, Darrow told me that Hart had made a statement to that effect. I think in late July Darrow said there was to be no petition to discharge him if he would discharge Miss Johnson and Mr. Kulp. As to whether Darrow told me that Hart made the statement to him, I don't recall the basis of Darrow's statement, but he told me that.

I met Miss Johnson early in the proceedings, and have no recollection of Kulp until the summer of 1935. I think I first met Kulp when I went to the office of the Trust at 29 S. LaSalle Street after Darrow's appointment.

Early in the proceedings Darrow informed me that he was going to continue the services of Miss Johnson and Kulp until he became oriented in the job as trustee. I remember he said it was to be temporary.

I don't think Darrow said anything to me about Kulp and Miss Johnson conducting a securities business, but I don't recall it. I did not know that Kulp and Miss Johnson were trading in the underlying securities of the trusts. I did not know that Darrow, as trustee, was purchasing securities from these employees.

I did not know that they owned Colonial, but I have since learned that fact. As to when I first learned it, I think it may have been involved in the Andrews' report.

That was when I first definitely learned of it.

396 I think that late in the summer of 1935 I learned a man named Rose had the insurance. Although Darrow testified (page 2150) that at the first meeting he had with Kulp, Johnson and me, I asked about the insurance and commissions obtained by Kulp. I have no recollection of any such meeting.

I have a recollection [that] late in the summer after which the proceedings started, of attending a meeting at which Rose stated he carried most of the insurance on these buildings. I don't remember Kulp being there. Rose was an officer of one of the reorganized companies known as the North Clark Street Building.

So far as I recall, nothing further was said at that occasion or at a later occasion, about the insurance on the properties. I didn't know that Kulp was receiving a portion of the commissions, nor do I ever remember hearing that he was obtaining insurance premiums. I don't recall that Darrow ever informed me that Kulp was receiving insurance premiums, nor did Kulp, Johnson or anyone else connected with these cases so inform me, so far as I recall.

I think I advised Darrow to dispense with the services of Miss Johnson or Mr. Kulp during 1935. I was opposed to any continued retention of Miss Johnson or Mr. Kulp. I informed Darrow of that fact once, twice, or three times, probably during the summer of 1935. Darrow's answer was that they were familiar with the affairs of the companies and he needed them in management.

I did not give as my reasons for recommending the dismissal of Kulp and Miss Johnson the reason ascribed to me by Darrow at page 2341 of the record, namely that if Miss Johnson or Kulp remained they would gradually obtain control and take the companies from Darrow and me and neither of us would have any income from them.

At the early conversations with Darrow he took the position that he wanted to continue the services of Miss Johnson and Mr. Kulp. I think I objected at that time and a month or two later I again suggested that their services be dispensed with. I raised the question many times and told him I was fearful that if the company was reorganized and Miss Johnson and Kulp emerged as controlling the trusts, it would be a reflection on his trusteeship. Miss Johnson was able and I felt if she stayed in as a confidential advisor of the trustee, it would not be good for the bankruptcy administration of the companies.

I was against it.

397 Darrow never told me I was not the person to see the SEC with him, neither did I tell Darrow that I was not the proper one to see the SEC with him.

I never discussed or suggested the employment of Kelley or any other counsel to represent Darrow before the Commission.

ROBERT McCORMICK ADAMS

(Cross Examination by Mr. Herriott)

So far as I recall, I saw Hart only once. I believe I was out of town in May, 1943 when Darrow was asked to see Hart. When I got back Darrow apprised me of the meeting and of the conversation.

This was in late May or early June of 1943. Darrow instructed me or I asked permission to see Hart. I was alone at that conversation. This was before Darrow and I both spoke to Hart. It was late in July, 1943 when Darrow told me the Commission would not file the petitions seeking his removal if he would discharge Miss Johnson and Kulp. This was after Darrow and I called on Hart.

During the latter part of June or in July the question of whether or not Darrow should resign came up. We had both examined the petitions and there was a serious question of whether he should resign or contest the petitions. After he determined to resign, he said that if he discharged them he knew the petitions would not be filed. He said they had rendered a great deal of service to him and he was not going to discharge them. I don't know the basis for his statement that he believed that if he discharged them the SEC would not ask for his removal.

When Darrow told me at the outset that he was going to keep Miss Johnson and Kulp, I don't think anything more was said than that their retention should be for a short period. I familiarized myself with all that had gone on shortly before the filing of these petitions. It was quite a picture and I was averse to their being retained. He said it would be for a short period, and I don't think I objected until later.

About a year or a year and a half after Darrow's appointment, I told him that they should be discharged because if they came out in control of the business he would be criticised. I had no knowledge of any method by which they might come out in control except they had been
398 with the companies since their inception. I had great and increasing respect for Miss Johnson's ability. I felt the retention of these people was not sound. I don't know how they could come out in control. I don't think I knew they were dealing in the securities until after the

Andrews' report. If they were the right arm of the trustee during the period of reorganization, I think they would be in a very strong position to get control.

Darrow did not discharge either of them. Miss Johnson had a vast knowledge of the detailed various securities of the 26 companies in the two trusts. There is no doubt that she was of value on the historical value and facts.

I think I did have a conversation with Darrow regarding a suit to recover profits on securities which they purchased and sold. I would be persona non grata to file suits and collect whatever money was collected. I think in the last weeks I did discuss with Darrow that I could handle the suits. When Darrow resigned, I went with him. I don't recall a conversation with Darrow in the summer of 1943 regarding my representing him as attorney in suing Kulp and Miss Johnson.

In the late summer of 1935 in connection with the North Clark Street Building, I met with Miss Johnson, Darrow, Rose, and Williamson of my office. Rose was present because, I believe, he was an officer and the meeting was in connection with the details of the reorganization. The question of the insurance on the properties was not the purpose of the meeting. I recall that Rose handled the insurance, that is all. I have no recollection of having then heard that Kulp was obtaining part of Rose's commission.

That was never discussed at any meeting I had with Darrow, Rose, Kulp, or anyone else. I first recall hearing about the insurance at the discussion when we were talking about the reorganization of the North Clark Street Building.

(Ledger sheets of Joseph Baumann were re-offered in evidence as Resp. Ex. 16 and 16-A and were received. A copy of a telegram from Mr. McCrann of the SEC in Philadelphia to attorney John H. Kelley of New York, having been verified by Mr. Roberson, was marked Darrow's Ex. 1, of May 28, 1947, and a copy of the letter sent by Mr. McCrann to Mr. Kelley confirming the telegram was marked Darrow's Ex. 2, of May 28, 1947. Mr. Herriott said Roberson agreed that, if material, a copy of the telegram may be received in evidence provided a copy of the confirming letter is received. Counsel said they had no objection. The Master stated that a copy of the telegram might be received in evidence.)

399 Trustee's Ex. 4A, marked for id. at pages 505-6, was received in evidence.

Trustee's Exhibits marked 4, 5, and 6 for id. at page 532, were received in evidence. Trustee's Ex. 7A to 7E for id. referred to at pages 629-30, were withdrawn.

Trustee's Ex. 8A through 8C for id. referred to at page 630, were withdrawn. The first 88 pages of Trustee's Ex. 12 received in evidence at page 749 and 783, were withdrawn from the exhibit and pages 89-92 of said exhibit remain in the record.

The exhibit, as amended, was marked as Trustee's Ex. 12 of May 28, 1947. Trustee's Ex. 1 and 1A through 1F of February 25, 1946, marked for id. at pages 1050-52, were received in evidence. A copy of the intervening petition filed by Darrow in the Kulp & Co. bankruptcy had been marked Trustee's Ex. 14 for id. at page 1479.

Trustee's Ex. 14 was received in evidence. The order of October 27, 1936 on the Kulp & Co. bankruptcy in which reference is made to the above-mentioned Darrow petition, was marked for id. as Darrow's Ex. 3 of May 28, 1947 and received in evidence.

A stipulation signed by counsel for all parties dealing with certain communications received by and sent by Joseph Baumann, was marked stipulation dated May 28, 1947, and was received as a bulk exhibit.

It was stated for the record that Parts I and II of said stipulation and the attached exhibits pertaining thereto, are introduced by the SEC and the other objectors and that Part III on page 8 and the attached documents pertaining to Part III, are offered in evidence on behalf of Darrow.

The Master fixed the following schedule of dates for filing of briefs: June 27, 1947 for objectors' original briefs; July 15, 1947 for Darrow's answering brief; and July 25, 1947 for reply briefs by objectors. Argument was set for July 29, 1947.

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RESPONDENTS EXHIBIT 3.

No. 11272

Bought of First National Bank

Date 11/6/36

Salesman

Sales O. K.

..... Shares)

\$)

Lot of Miscellaneous Securities

/ Issue

Rate Maturity
Price and Int. Div.

Delivery Instructions

Option Basis
Dated Int. Dates
Denominations Source

Exchange For
4000 Div & Lav. A
1000 Armour A
2000 Villa Garage

3500 St. Louis 2nd

Principal 255500
Int. To
Total
Commission
Postage & Ins.
Tax
Amount Due

1000 Rogers Park Figured Checked

362

Respondents Exhibits 3-A and 5

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RESPONDENTS EXHIBIT 3-A.**COLONIAL SECURITIES CO.**100 W. Monroe Street
Chicago, Ill.

Nov. 10 1936

No. 11306

Date 11-9-36

Salesman Office

Cage

Paul, E. Darrow, Chairman

We are pleased to confirm purchase for you of securities described below, subject to instruction as noted.

Quantity	Security	Rate	Maturity	Price	Amount
1 lot	Bonds				\$2555.00

Interest From To

Cash Journal

Principal—2555

Commission

Security Ledger

Prem. & Disc.

Tax

Profit & Loss

Shipping Charges

Bond Register

Joint Acct.

Amount Due

Interest

Sales Record

Total— 2555

RESPONDENTS EXHIBIT 5.

409. This agreement entered into this 5th day of November, 1936, by and between

**THE FIRST NATIONAL BANK OF
CHICAGO,**

a national banking association, hereinafter sometimes referred to as the "seller", and

COLONIAL SECURITIES COMPANY,

an Illinois corporation, hereinafter sometimes referred to as the "purchaser", witnesseth that:

Whereas, the seller owns the following listed note and bonds, to-wit:

Principal promissory note of Jacob Kulp & Co., Inc., dated November 24, 1933, in the amount of \$27,300.00, payable thirty days after date, to the order of Foreman-State National Bank, which said note has been reduced by partial principal payments, to the principal sum of \$9,554.68, and has been endorsed for value by the payee thereof to The First National Bank of Chicago, the payment of which note has been guaranteed by Jacob Kulp, as will more fully appear from an examination thereof, with interest at 7% from Sept. 30, 1934.

Deliverable as provided in paragraph 2 below upon payment of:	\$84,000.00 principal amount Federal Facilities Realty Trust Collateral Trust Series A 6½% Gold Bonds, due October 1, 1939, being bonds Nos. 96/100 both inclusive for \$100.00 each; 569/615 both inclusive for \$500.00 each; 955-6 both inclusive for \$1000.00 each; 1028/1085 both inclusive for \$1000.00 each; all with interest coupons due April 1, 1933 and subsequent coupons attached.
\$1,075.00	

20.00	\$2,000.00 principal amount South Shore Villa Annex Building 6½% First Mortgage Bonds, being Bonds Nos. 15-16 both inclusive for \$500.00 each, due November 20, 1930, with no coupons attached, and Nos. 66 and 67 for \$500.00 each, due May 20, 1938, with May 20, 1933 and subsequent coupons attached.
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410

Deliverable as \$7500.00 principal amount Austin Station provided in Postoffice Building First Mortgage Income Bonds, bearing interest at not to exceed 3%, being Bonds Nos. 424 and 425 below upon payment of: for \$1000.00 each, due by extension agreement April 15, 1948, and Bonds Nos. 175 and 176 for \$500.00 each, due April 15, 1948; and Bonds Nos. 235/41 both inclusive, 288 and 290 for \$500.00 each, due October 15, 1948, with April 15, 1937 and subsequent coupons attached.

\$3,750.00

5,000.00

\$10,000.00 Division and Laverne Postoffice building First Mortgage 6% Sinking Fund Series A Bonds, being Bonds Nos. 190 for \$1000.00; 124-140 for \$500.00 each; 30 for \$100.00 and 36/38 both inclusive and 41 for \$100.00 each, due July 15, 1939, with interest coupons due January 15, 1937 and subsequent coupons attached.

875.00

\$3,500.00 principal amount Park View Manor Building 7% First Mortgage Bonds, being Bonds No. 866 for \$500.00, Nos. 1104, 1046 and 976 for \$1000.00 each, all due June 1, 1938, with coupons due June 1, 1933 and subsequent coupons attached.

300.00

\$3,000.00 principal amount Ogden Park Postoffice Building 6% First Mortgage Sinking Fund Bonds, being Bonds Nos. 365/6 and 369 for \$1000.00 each, due June 1, 1939, with coupons due June 1, 1933 and subsequent coupons attached.

250.00

\$1,000.00 principal amount 6929 North Clark St. Building Corporation First Mortgage Income Bonds, bearing interest at not to exceed 3%, No. 492 for \$1000.00, due August 1, 1943, registered in the name of John J. Feeley, and to which is attached a blank bond power executed by John J. Feeley.

250.00 \$1,000.00 principal amount Armour Station Postoffice First Mortgage Series A Income Bonds Nos. D-4 and D-39 for \$500.00 each, bearing interest at not to exceed 3%, due by extension agreement stamped thereon June 15, 1950, with December 15, 1936 and subsequent coupons attached.

70.00 Non-negotiable receipt of the National City Bank of Cleveland, depository under proceedings of reorganization filed in cause No. 37413 in the District Court of the United States, Northern District of Ohio, Eastern Division, entitled "In the Matter of the United States Parcel Post Building Company, debtor, and dated August 18, 1936 for \$7000.00 principal amount of The United States Parcel Post Building Company First Mortgage Leasehold 6 $\frac{1}{4}$ % Bonds No. 232 for \$1000.00, due December 1, 1942; Nos. 676, 680 and 806 for \$1000.00 each, and Nos. 497, 577, 597, 627, 653 and 660 for \$500.00 each, due June 1, 1943, all with June 1, 1933 and subsequent coupons attached.

375.00 \$1,500.00 principal amount 22nd Street Station Post Office 6 $\frac{1}{2}$ % First Mortgage Sinking Fund Bonds Nos. 232 for \$1000.00 and 171 for \$500.00, due December 1, 1931, on which appear notations indicating that interest has been paid to June 1, 1934.

35.00 \$3,500.00 principal amount United States Government Parcel Post & Service Station 7% Bonds, bearing by extension agreement 5% interest, being Nos. 114/16 both inclusive for \$1000.00 each and No. 7 for \$500.00, due June 1, 1942 with June 1, 1935 and subsequent coupons attached.

\$12,000.00

and

Whereas, the obligors of said note and of many of the bonds are now either in bankruptcy or in corporate reorganization, as is well known to the purchaser, and

Whereas, claims have been or may have been filed by the "seller", or its attorneys, or by the trustee under the bond issues or by others in certain of said proceedings, and

Whereas, the purchaser is more familiar with the value and condition of said bonds and note, and with the proceedings involving said promissors and claims filed therein, than is the seller, and

412 Whereas, the purchaser has offered the seller Twelve Thousand Dollars (\$12,000.00) for the interest of the seller in said note and bonds and seller's interest in the claims filed thereon,

NOW, THEREFORE

1. The seller hereby agrees to sell to the purchaser the said note and bonds, but without any representation or warranty in any event whatsoever, for the said sum of Twelve Thousand Dollars (\$12,000.00), and acknowledges receipt of a note of even date herewith, executed by the purchaser and payable to the order of the seller on or before four (4) months from the date hereof, not as payment for said securities, but as evidence of its promise to pay said sum.

2. The securities and the non-negotiable receipt representing certain bonds covered by this agreement shall be held by, and title thereto shall remain in, the seller until payment of said purchase price; provided, however, that the seller will deliver possession and transfer title to the purchaser of any of the securities, except as hereinafter provided, upon the actual payment to the seller of the sum set out in the left hand column opposite the description of such securities; provided further, however, that nothing herein contained shall be construed so as to compel the seller to deliver the \$3000.00 Ogden Park Postoffice Building Bonds prior to July 1, 1937.

3. The seller agrees to endorse the said note of Jacob Kulp, & Co., Inc. as follows:

413 "Without warranty or recourse in any event whatsoever against The First National Bank of Chicago, or Foreman-State National Bank"

and to deliver the same to the purchaser as soon as the purchaser is entitled to receive any of said bonds.

4. The seller agrees to prepare, execute and deliver a bill of sale covering said note and bonds at the time of payment therefor.

5. The purchaser agrees that there shall be no duty upon the seller to take any steps from this day forward to protect said securities or to take any action of any kind in the reorganization proceedings involving any of said securities, provided however that nothing herein contained shall preclude the seller from taking such action if it desires and the seller may, so long as it has title to said securities, take any and all action involving said securities which it may desire, without incurring any liability whatsoever to the purchaser for such action.

6. The seller agrees to execute such further instruments, letters or documents as may be necessary to effect the sale of said securities or assignment of claims to the purchaser; said instruments to be prepared by the purchaser and approved by the counsel for the seller.

7. The purchaser agrees to pay to the seller on or before March 5th, 1937 said sum of Twelve Thousand Dollars (\$12,000.00), and accept delivery of said note and bonds.

414 In Witness Whereof, the parties hereto have caused these presents to be executed, in duplicate, by their duly authorized officers, this 5th day of November, A. D. 1936.

The First National Bank Of Chicago
By: Thomas Goldman
Its Assistant Vice-President

Attest:
L. L. Hobbs
Its Assistant Cashier

Colonial Securities Company
By: Jacob Kulp
Its Pres.

Attest:
M. Johnson
Its Secretary

415 State of Illinois }
County of Cook } ss.

I, Gaylord A. Freemont, a Notary Public in and for the County and State aforesaid, Do Hereby Certify that Thomas G. Johnson, Assistant Vice-President, and L. L. Hobbs, Assistant Cashier, of The First National Bank of Chicago, who are personally known to me to be the same persons whose names are subscribed to the foregoing as such Assistant Vice-President and Assistant Cashier, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, and as the free and voluntary act of the said The First National Bank of Chicago, for the uses and purposes therein set forth, and caused the corporate seal of said bank to be thereto attached.

Given under my hand and notarial seal this 5th day of November, A. D. 1936.

Gaylord A. Freemont
Notary Public

State of Illinois }
County of Cook } ss.

I, Gaylord A. Freemont, a Notary Public in and for the County and State aforesaid, Do Hereby Certify that Jacob Kulp, President, and M. Johnson, Secretary, of Colonial Securities Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing as such President and Secretary, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, and as the free and voluntary act of the said Colonial Securities Company, for the uses and purposes therein set forth, and caused the corporate seal of said company to be thereto attached.

Given under my hand and notarial seal this 5th day of November, A. D. 1936.

Gaylord A. Freemont
Notary Public

416 **RESPONDENT'S EXHIBIT 6 FOR ID.**

7/15/46

Number 7779

Colonial Securities Co.
29 So. LaSalle St.

Chicago Nov. 6, 1936—\$2550.00

Pay to the order of First National Bank of Chicago
C331Reg 2550 Dols 00 Cts.

Colonial Securities Co.
M. Johnson Secy.

To the
Continental Illinois National Bank
and Trust Company
of Chicago
(2-3) Chicago, Illinois (2-3)

Stamp—On reverse side.

Paid through Chicago Clearing House
420 Nov 7 36

To the
First National Bank
—or—

Pay to the order of
Any Bank or Banker

Prior endorsements guaranteed
2-1 First National Bank 2-1
of Chicago, Illinois

417 **RESPONDENT'S EXHIBIT 6-A FOR ID.**

7/15/46

Number 7928

Colonial Securities Co.
29 So. LaSalle St.

Chicago, Dec. 4, 1936—\$2750.00

Pay to the order of First National Bank of Chicago
C331Reg 2750 Dols 00 Cts.

Colonial Securities Co.
M. Johnson Secy.

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Respondent's Exhibit 6-B

Stamp—On reverse side:
To the
Continental Illinois National Bank
and Trust Company
of Chicago
(2-3) Chicago, Illinois (2-3)
Paid through Chicago Clearing House
450 Dec. 8 36
To the
First National Bank
—or—
Pay to the order of
Any Bank or Banker
Prior endorsements guaranteed
2-1 First National Bank 2-1
of Chicago, Illinois

418 **RESPONDENT'S EXHIBIT 6-B FOR ID.**

7/15/46

Number 8053

Colonial Securities Co.
209 So. LaSalle St.

Chicago, Dec. 31, 1936—\$3075.00

Pay to the order of First National Bank of Chicago
C331Reg 3.0—75 Dols 00 Cts.

Colonial Securities Co.
M. Johnson Secy.

Stamp—On reverse side:
To the
Continental Illinois National Bank
and Trust Company
of Chicago
(2-3) Chicago, Illinois (2-3)
Paid through Chicago Clearing House
540 Jan. 2, 1937
To the
First National Bank
—or—
Pay to the order of
Any Bank or Banker
Prior endorsements guaranteed
2-1 First National Bank 2-1
of Chicago, Illinois

419 **RESPONDENT'S EXHIBIT 6-C FOR ID.**

7/15/46

Number 8213

Colonial Securities Co.
29 So. LaSalle St.

Chicago, 2-5, 1937—\$1750.00

Pay to the order of The First National Bank & Trust Co.
C331Reg 1,750 Dols 00 Cts.

Colonial Securities Co.
M. Johnson Secy.

Stamp—On reverse side:

To the
Continental Illinois National Bank
and Trust Company
of Chicago

(2-3) Chicago, Illinois (2-3)

Paid through Chicago Clearing House
500 Feb. 6, 37

To the
First National Bank
—or—

Pay to the order of
Any Bank or Banker
Prior endorsements guaranteed
2-1 First National Bank 2-1
of Chicago, Illinois

7/15/46

Number 8298

Colonial Securities Co.
29 So. LaSalle St.

Chicago, March 5, 1937—\$1870.00

Pay to the order of First National Bank of Chicago
C331Reg 1,870 Dols 00 Cts.

Colonial Securities Co.
M. Johnson Secy.

Stamp—On reverse side:

To the
Continental Illinois National Bank
and Trust Company
of Chicago

(2-3) Chicago, Illinois (2-3)

Paid through Chicago Clearing House

430 Mar. 8, 37

To the
First National Bank

—or—

Pay to the order of
Any Bank or Banker
Prior endorsements guaranteed
2-1 First National Bank 2-1
of Chicago, Illinois

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NATIONAL REALTY TRUST

SECURITY TRANSACTIONS BY
 COLONIAL SECURITIES COMPANY with NATIONAL REALTY TRUST or SUBSIDIARIES
 MAY 24, 1935 to DECEMBER 31, 1941
 SALES-30 AT COST

Sale Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost
10/20/35	Armour Station Bldg. Corp., 1st Mtge. 3% Income Bonds	D12	National	10/21/35	Rogers & Tracy	\$ 500.	15	\$ 75.00	\$ 75.00
8/27/37	" "	D62	Issuer	8/28/37	J.R. Hall	500.	25	125.00	125.00
8/11/37	" "	W11	National	8/11/37	Carl Bruckhausen	1000.	25	250.00	250.00
10/15/38	" "	W16; D45-46	National	10/15/37	Selected Investors	2000.	15	300.00	300.00
8/21/38	Austin Station Bldg. Corp., 1st Mtge. 3% Income Bonds	D100-101	National	8/30/38	Stein, Brennan & Co.	1000.	40	400.00	400.00
8/5/38	" "	W381-382-383-384-385	Issuer	8/5/38	W. F. Ben-net	5000.	40	2000.00	2000.00
10/10/38	" "	D204	Issuer	10/10/38	W.R. Ragan	500.	45	225.00	225.00
8/12/38	Berwyn P.O. Bldg. Corp., 1st Mtge. 3% Income Bonds	W18-18	National	8/10/38	Steelman & Birkins	2000	20	400.00	400.00
1/24/39	" "	D8-30	National	1/21/38	Barris & Company	1000.	20	200.00	200.00
9/26/39	" "	D15-16	Issuer	9/26/39	Paul H. Davis & Co.	1000.	26	260.00	260.00
3/19/37	Division & LaVergne Bldg. Corp., 1st Mtge. 5% Income Bonds	W167-180	National	3/19/37	Nickelson & Co.	2000.	40	800.00	800.00

NATIONAL REALTY TRUST
SECURITY TRANSACTIONS BY
COLONIAL SECURITIES COMPANY with NATIONAL REALTY TRUST or SUBSIDIARIES
MAY 24, 1935 to DECEMBER 31, 1941
BALANCED AT COST

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cash
5/24/38	Division & LeVergne Bldg. Corp., 1st Mtge. 8% Income Bonds	D86- 89	Issuer	5/24/38	Meta Wloch	\$1000.	40	\$ 400.00	\$ 400.00
6/26/39	" "	D75	Issuer	6/26/39	Emma B. Seidal	800.	40	200.00	200.00
6/26/39	" "	D107- 108; C49	Issuer	6/26/39	Robert & Mary Seidal	1100.	40	440.00	440.00
5/27/36	Division & LeVergne Bldg. Corp., 2nd Mtge. 4% Income Bonds	D11	Issuer	5/27/36	Pertha Smart	500.	30-1/4	151.25	151.25
12/16/35	" "	D25	Darrow- Chairman		P. U. Freed- man	800.	30	150.00	150.00
12/16/35	" "	D20-21-Darrow- 22-23- Chairman 24			A. S. Al- schuler	2500.	30	750.00	750.00
2/17/37	Grand Rapids P.P.Bldg.Corp., 90 1st Mtge. 4% Cum. Income Bonds	889-	Issuer	2/17/37	DeYoung, Larson & Torgna	2000.	50	1000.00	1000.00
10/30/35	Los Angeles Service Station, Inc., 1st Mtge. 3% Income Bonds	D162	National	10/21/35	Rogers & Tracy	500.	8	40.00	40.00
4/30/40	" "	D156- 300	Issuer	4/11/40	Jos. F. Dixon & Co.	1000.	15	150.00	150.00

NATIONAL REALTY TRUST

SECURITY TRANSACTIONS BY
 COLONIAL SECURITIES COMPANY with NATIONAL REALTY TRUST or SUBSIDIARIES
 May 26, 1935 to December 31, 1941
 HANDLED AT COST

Sales Date	Security	Fond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost
6/25/37	Olsen Park P.O. Bldg. Corp., 343 1st Mtge. 3% Income Bonds	W743	Issuer	6/25/37	Mrs. A. Schwartz	\$2000.	30	\$ 600.00	\$ 600.00
5/25/39	" "	D167	Narrow- Chairman	5/25/39	Fuller, Crutenden & Co.	500.	21	105.00	105.00
5/2/39	Parkview Manor Bldg. Co., 1st Mtge. 3% Income Bonds	6767	Issuer	5/2/39	Straus Securities Co.	100.	20	20.00	20.00
10/17/35	Postal Facil- ities, Inc., 1st Mtge. 3 1/4 Cum. Income Bonds	W66	National	10/23/35	Fuller, Palmer & Co.	1000.	46-1/2	465.00	465.00
7/5/38	" "	W136	Issuer	6/6/38	P.W. Fox & Co.	1000.	58	580.00	580.00
7/5/38	" "	W416	Issuer	7/5/38	Lilley & Co.	1000.	58	580.00	590.00
7/30/38	" "	W45- 61	Issuer	7/29/38	Lilley & Co.	1000.	59-3/4	597.50	597.50
11/1/38	" "	No Record	National	10/31/38	Josephine Burmester	500.	60	300.00	300.00
2/15/39	" "	W41	Issuer	2/3/39	Kenneth Jensen	1000.	55	550.00	550.00
2/15/39	" "	W223	Issuer	2/15/39	G. Johnson	1000.	55	550.00	550.00
2/15/39	" "	D56	Issuer	11/30/38	Kenneth Jensen	500.	55	275.00	275.00
4/24/35	" "	W273	National	4/24/35	Elizabeth Harovec	1000.	60	600.00	600.00
4/24/35	" "	W263	National	4/24/35	G. Johnson	1000.	60	600.00	600.00

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NATIONAL REALTY TRUST

SECURITY TRANSACTIONS BY
 COLONIAL SECURITIES COMPANY with NATIONAL REALTY TRUST or SUBSIDIARIES
 MAY 24, 1935 to DECEMBER 31, 1941
 HANDLED AT COST

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost
2/15/35	6929 N. Clark St. Bldg. Corp., 1st Mtge. 3% Income Bonds	D429	Issuer	2/15/37	Nickelsen & Co.	\$ 500.	25	\$ 125.00	\$ 125.00
12/13/38	6748 Grandon Ave. Bldg. Corp., 1st Mtge. 3% Income Bonds	8394- 595-388; D110-111	Issuer	12/5/38	Catherine Higgins	4000.	25	1000.00	1000.00

TOTAL PAR VALUE \$42,500.00

TOTAL COST \$15,285.75

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NATIONAL REALTY TRUST GROUPPURCHASE AND SALES BY COLONIAL SECURITIES COMPANY
WHERE SELLING PRICE WAS LESS THAN COST

Security Transactions by Colonial Securities Company with National Realty Trust or Subsidiaries—May 24, 1935 to December 31, 1941:

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost	Difference between Cost and Selling Price
9/26/36	Grand Rapids P.F. Bldg. Corp. 1st Mtge. 4% Cum. Income Bonds	4105	Issuer	9/24/36	Daly & Crabb	\$2000.	50	\$1000.00	\$1160.00	\$160.00
12/15/36	Postal Facilities, Inc. 1st Mtge. 5% Cum. Income Bonds	4155	Issuer	12/15/36	George Canine	500.	55	275.00	290.00	5.00
9/16/37	Windsor Shore Bldg. Corp. 1st Mtge. 3% Income Bonds	4154	Issuer	7/2/37	and Gow	1000.	25	250.00	400.00	150.00
Purchase & Sales by Colonial Securities Company:										
7/1/36	Austin Station Bldg. Corp., 1st Mtge. 3% Income Bonds	4105	C. Julius	5/27/36	Flora Kulp	500.		250.00	300.00	50.00
3/31/36	Berwyn P.O. Bldg. Corp., 2nd Mtge. 2% Income Bonds	415	M. Levy	6/7/37	Leslie Marshall	800.		75.00	435.00	360.00
10/16/36	Postal Facilities, Inc. 1st Mtge. 5% Cum. Income Bonds	4156	G. P. Lyle & Co.	10/16/36	A. Nickerson	1000.		417.50	500.00	82.50
Jacob Kulp:										
4/25/39	Ogden Park P.O. Bldg., 1st Mtge. bonds	334-336-338	Issuer	4/25/39	H. M. Southaff	3000.		1080.00	1200.00	120.00

NATIONAL REALTY TRUST GROUPPURCHASES AND SALES BY COLONIAL SECURITIES COMPANYWHERE SELLING PRICE WAS LESS THAN COST

Security Transactions by Colonial Securities Company with National Realty Trust or
Subsidiaries—May 24, 1935 to December 31, 1941:

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost	Difference between Cost and Selling Price
9/26/36	Grand Rapids F.P. Bldg. Corp. D15-16 1st Mtge. 4 1/2 Cum. Income Bonds	W105	Issuer	9/24/36	Daly & Graeb	\$2000.	80	\$1000.00	\$1180.00	\$180.00
12/16/36	Postal Facil- ities, Inc., 1st Mtge. 5 1/2 Cum. Income Bonds	D154	Issuer	12/15/36	George Conine	500.	55	275.00	280.00	5.00
9/16/37	Windsor Shore Bldg. Corp., 1st Mtge. 3 1/2 Income Bonds	D134- 135	Issuer	7/2/37	Ang Gow.	1000.	25	250.00	400.00	150.00
Purchases & Sales by Colonial Securities Company:										
7/1/36	Austin At- tention Bldg. Corp., 1st Mtge. 3 1/2 Income Bonds	D103	C. Julius- son	5/7/36	riore Kulp	500.		250.00	300.00	50.00
3/31/36	Berwyn P.O. Bldg. Corp., 2nd Mtge. 2 1/2 Income Bonds	D15	M. Levy	6/7/37	Leslie Karsa:al	500.		75.00	455.00	380.00
10/16/36	Postal Facil- ities, Inc., 1st Mtge. 5 1/2 Cum. Income Bonds	D399	G. P. Lyle & Co.	10/16/36	A. Nickes	1000.		417.50	500.00	82.50
Jacob Kulp:										
4/25/39	Ogden Park P.O. Bldg., 1st Mtge. bonds	534- 535-539	Issuer	4/25/39	H. M. Southoff	3000.		1080.00	1200.00	120.00

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NATIONAL REALTY TRUST GROUPPURCHASE AND SALES BY COLONIAL SECURITIES COMPANY
WHERE SELLING PRICE WAS LESS THAN COSTSecurity Transactions by Colonial Securities Company with National Realty Trust or
Subsidiaries—May 14, 1933 to December 31, 1941:

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased By	Per Value	Sales Price	Sales Amount	Cost	Difference between Cost and Selling Price
8/28/36	Grant Maple P.P. Bldg. Corp. 515-16 1st Mtge. 3 1/2 Cum. Income Bonds	515-16	Issuer	8/14/36	July & Crab	32.00	50	1100.00	1180.00	117.00
12/15/36	Postal Bldg. Bldg. Co., Inc., 1st Mtge. 3 1/2 Cum. Income Bonds	51-5	Issuer	12/15/36	George Corline	500.	55	275.00	283.00	8.00
8/18/37	Simmons Bldg. Bldg. Co., Inc., 1st Mtge. 3 1/2 Income Bonds	5154-155	Issuer	7/2/37	Wing Low	1000.	25	250.00	400.00	150.00
Purchase & Sales by Colonial Securities Company:										
7/1/36	Austin Bldg. Co., Inc., 1st Mtge. 3 1/2 Income Bonds	1103	G. Julius	5/7/36	Flora	500.		150.00	300.00	50.00
5/31/39	Berwyn P.O. Bldg. Corp., 1st Mtge. 3 1/2 Income Bonds	515	M. Levy	4/7/37	Leslie Marshall	500.		75.00	455.00	380.00
10/16/36	Postal Bldg. Bldg. Co., Inc., 1st Mtge. 3 1/2 Cum. Income Bonds	5150	G. P. Lyle & Co.	10/16/36	A. Hickox	1000.		417.50	500.00	92.50
Jacob Kulps										
4/25/39	Ogden Park P.O. Bldg. Co., Inc., 1st Mtge. bonds	554-558	Issuer	4/25/39	H. L. Sautthoff	3000.		1020.00	1200.00	180.00

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FEDERAL FACILITIES REALTY TRUST

SECURITY TRANSACTIONS BY
 COLONIAL SECURITIES COMPANY with FEDERAL FACILITIES REALTY TRUST or SUBSIDIARIES
 MAY 24, 1935 to Dec/31, 1941
 BALANCED AT COST

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost
5/19/35	Chicago F.O. Service Bldg. Corp., 1st Mtg. 5% Cum. Income Bonds	M544	Issuer	5/5/35	Frances L. Buckett	\$1000.	40	\$ 400.00	\$ 400.00
10/10/35	" "	M158- 159-160	Federal	10/10/35	Stein, Brennan & Co.	3000.	39-1/2	1185.00	1185.00/
11/6/35	" "	M740	Federal	11/6/35	Stein, Brennan & Co.	1000.	39-1/2	395.00	395.00
11/6/35	" "	M741- 742	Federal	11/6/35	Stein, Brennan & Co.	2000.	39-1/2	790.00	790.00
11/6/35	" "	225	Federal	10/10/35	Stein, Brennan & Co.	500.	39-1/2	197.50	197.50
1/20/36	" "	M681- 682-683- 684-685	Issuer	1/22/36	Kneeland & Company	5000.	36-3/4	1837.50	1837.50
7/2/37	" "	M721- 722	Issuer	7/2/37	Gertrude Gradolph	2000.	35	700.00	700.00
7/2/37	" "	M79- 79-178- 696	Issuer	7/2/37	Catherine Steen	4000.	35	1400.00	1400.00
12/20/37	" "	M248- 249-250	Issuer	12/20/37	Doyle, O'Connor & Co.	3000.	31-1/2	945.00	945.00
2/16/38	" "	D10	Issuer	1/25/38	G. L. Ohrstrom & Co.	500.	31-1/2	157.50	157.50
5/5/38	" "	M352- 353-354- 355-356	Issuer	5/5/38	P. F. Cox & Co.	5000.	23-1/2	1175.00	1175.00
9/31/35	Chicago F.O. Service Bldg. Corp., 2nd Mtg. 4% Income Bonds	M45- 46-50; 540-41- 48-103- 132-133	Issuer	5/5/35	Frank Fuller	6000.	25	1500.00	1500.00
12/26/39	" "	M3-4- 5-7- 79-80	Issuer	12/8/35	Catherine Higgins	3000.	37	900.00	900.00

FEDERAL FACILITIES REALTY TRUST

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2.

SECURITY TRANSACTIONS BY
 COLONIAL SECURITIES COMPANY with FEDERAL FACILITIES REALTY TRUST or SUBSIDIARIES
 MAY 24, 1935 to December 31, 1941
 Balance at Cost

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost
10/16/37	Chicago P.O. Service Bldg. Corp., 2nd Mtg. 45 Income Bonds	W31- 35	Issuer	10/16/37	Selected Investments Co.	\$2000.	20	\$ 400.00	\$ 400.00
3/14/38	" "	D57	Issuer	3/9/38	T.H.Vallee	500.	10	50.00	50.00
8/5/37	Columbus P.P. Bldg., Inc., 1st Mtg. 6 1/2 Income Bonds	542	Federal	8/16/37	Pearl Bernstein	1000.	65	650.00	650.00
2/9/37	" "	122	Darrow- Chairman	2/9/37	G.P.Lyle & Co.	500.	75	375.00	375.00
8/25/36	Irving Park P.O.Bldg.Corp., 108 1st Mtg. 35 Income Bonds	82-	Federal	8/25/36	Catherine A. Higgins	1000.	30	300.00	300.00
8/26/36	McKinley Park Station Bldg. Corp., 1st Mtg. 35 Income Bonds	71	Issuer	8/26/36	Thos.Bank	1000.	23-1/2	235.00	235.00
2/3/38	" "	21	Issuer	2/3/38	Lucy W. Nickelson	500.	32-1/2	162.50	162.50
12/28/36	Dallas Parcel Post Station, Inc., 1st Mtg. 400-441- 35 Com.Income Bonds	411- 455-449- 440-441- 442; 2000	Darrow- Chairman	12/28/36	Nickelson & Co.	5500.	32	2080.00	2080.00

FEDERAL FACILITIES REALTY TRUST

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SECURITY TRANSACTIONS BY
 COLONIAL SECURITIES COMPANY with FEDERAL FACILITIES REALTY TRUST or SUBSIDIARIES
 MAY 24, 1936 to DECEMBER 31, 1941
 HANDED AT COST

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost
11/27/36	Dallas Parcel Post Station, Inc., 1st Mtge. 5% Cum. Income Bonds	M358	Barrow- Chairman	11/27/36	Kneeland & Co.	\$1000.	28-1/4	\$ 282.50	\$ 282.50
7/28/37	"	M512	Issuer	7/28/37	Kneeland & Co.	1000.	55	530.00	530.00
3/15/38	"	M193- 252	Federal	3/17/38	Louis W. Ochs & Ass.	2000.	18	800.00	800.00
4/23/37	Ferry Station P.O., Inc., 1st Mtge. 5% Cum. Income Bonds	M509- 800-801- 802-803	Issuer	4/22/37	Dempsey, Tegeler & Co.	5000.	20	1000.00	1000.00
12/1/37	"	M465	Issuer	12/2/37	Herbert S. Greene & Co.	1000.	28	280.00	280.00
4/5/38	"	M46- 47	Issuer	4/6/38	Lilley & Company	2000.	26-1/2	530.00	530.00
6/26/38	"	C32	Issuer	6/16/38	Olmsted Bros.	100.	25	25.00	25.00
7/27/38	"	C46	Issuer	7/27/38	Herbert S. Greene & Co.	100.	25	25.00	25.00
3/12/38	"	M7	Federal	3/11/38	Kneeland & Co.	1000.	23-1/4	232.50	232.50
11/10/38	"	M526- 433- 577- 680	Herbert L. Greene & Co.	11/10/38	Federal	4000.	27-1/4	1090.00	1090.00
9/14/38	"	C167	Federal	9/12/38	Kneeland & Co.	100.	10	10.00	10.00
9/14/38	"	M35	Federal	9/17/38	Hartley Nogers & Co.	1000.	19	190.00	190.00

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FEDERAL FACILITIES REALTY TRUST

SECURITY TRANSACTIONS BY
 COLONIAL SECURITIES COMPANY with FEDERAL FACILITIES REALTY TRUST or SUBSIDIARIES
 MAY 24, 1936 to December 31, 1941
 BALANCED AT COST

Sale Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost
12/11/35	Quincy Station P.C. Bldg. Corp., 1st Bldg. 5% Cum. Income Bonds	W135-530	Darrou- Chairman	12/20/35	Kneeland & Co.	\$3000.	84-1/2	\$1065.00	\$1065.00
9/22/37	"	W374	Issuer	9/22/37	Mason Bros.	1000.	45-1/2	455.00	455.00
10/4/37	"	W36-206-370-392	Issuer	10/4/37	Herbert E. Greene & Co.	4000.	45-3/4	1750.00	1750.00
10/5/37	"	W280-328	Issuer	10/5/37	Mrs. Lottie Clute	2000.	45	900.00	900.00
10/14/37	"	W29-29	Issuer	10/14/37	Minnie Garung	2000.	45	900.00	900.00
10/26/37	"	W353-354	Issuer	10/26/37	Herbert E. Greene & Co.	2000.	45	860.00	860.00
1/18/38	"	L21	Issuer	1/18/38	Rebecca Gilbert	500.	45-1/2	227.50	227.50
4/20/38	"	W372-373; D57-177	Issuer	4/20/38	Herbert E. Greene & Co.	3000.	42-1/2	1275.00	1275.00
9/3/37	Quincy Station P.C. Bldg. Corp., 2nd Bldg. 5% Income Bonds	C24-39	Issuer	9/9/37	Priscilla Mays	200.	35	70.00	70.00
2/10/39	South Side P.O. Serv. Bldg. Corp., 1st Bldg. 5% Income Bonds	W192	Federal	2/10/39	L.B. Harris	1000.	40	400.00	400.00
2/14/39	"	C49-49	Issuer	2/14/39	L. E. Graham	200.	40	80.00	80.00

FEDERAL FACILITIES REALTY TRUST

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SECURITY TRANSACTIONS BY
 COLUMBIA SECURITIES COMPANY with FEDERAL FACILITIES REALTY TRUST or SUBSIDIARIES
 MAY 24, 1935 to December 31, 1941
 HANDLED AT COST

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost
12/18/39	South Side P.O. Bldg- Serv. Bldg. Corp., 188 1st Mtge. 5% Income Bonds		Federal	12/27/39	J.J. Jeffrey	\$1000.	41-1/2 %	\$ 415.00	\$ 415.00
3/11/37	Twenty-Second St. Station Bldg. Corp., 1st Mtge. 5% Income Bonds	157	Issuer	3/9/37	Walter W. Leahy & Co.	500.	18	80.00	80.00
11/30/37	" "	212	Federal	3/30/37	Doyle, O'Connor & Co.	1000.	21	210.00	210.00
9/10/37	United States Bldg. Corp., 1st Mtge. 5% Income Bonds	177- 178	Issuer	8/24/35	Cornell Schroeder & Co.	200.	20	40.00	40.00
9/10/37	" "	348	Issuer	4/14/37	Edward D. Jones & Co.	500.	20	100.00	100.00
5/25/37	" "	95- 96-97	Darwin- Chairman	9/11/37	Ross Tavin	8000.	20	800.00	800.00
3/10/37	" "	410- 411-412- 413-414- 415-416-417	Issuer	3/10/38	1st Nat'l. Bank of Chicago	4000.	25	1000.00	1000.00
2/6/38	" "	300- 320-462	Issuer	2/6/38	H. L. Robinson, Trustee	2000.	20	800.00	800.00
9/29/37	Villa Bldg. Corp. 1st Mtge. 5% Income Bonds	41	Federal	9/24/37	Rogers & Tracy	500.	8	80.00	80.00

TOTAL PAR VALUE \$90,500.00

TOTAL COST \$21,277.50

PURCHASE AND SALES BY COLONIAL SECURITIES COMPANY
WHICH SELLING PRICE WAS LESS THAN COST

Security Transactions by Colonial Securities Company with Federal Facilities Realty Trust or Subsidiaries—May 24, 1935 to December 31, 1941:

Sale Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost	Difference between Cost and Selling Price
2/14/36	Chicago P.O. Service Bldg. Corp., 1st Mtge. 5 1/2 Cum. Income Bonds	433	Issuer	2/11/36	Anna Bjorkst	1000.	40	390.00	400.00	10.
2/14/36	" "	434-547-779	Issuer	2/11/36	Marie Walsh	5000.	40	1175.00	1200.00	25.
2/30/36	" "	8708	Federal	3/30/36	Fuller, Rooney & Co.	1000.	36-1/2	360.00	365.00	5.
7/22/36	Dallas Parcel Post Station, Inc., 1st Mtge. 3 1/2 Cum. Income Bonds	4357	Issuer	11/27/36	Kneeland & Co.	1000.	29-1/4	270.00	282.50	12.
7/17/37	Ferry Station P.O., Inc., 2nd Mtge. 1 1/2 Income Bonds	173-191-228-236-253-252	Federal	6/19/37	Wickson, Nichols & Robbins, Inc.	3500.	7-1/2	27.50	282.50	17.
10/17/35	Quincy Station P.O. Bldg. Corp., 1st Mtge. 5 1/2 Cum. Income Bonds	2114-692	Larson Chairman	10/19/35	Stein, Brennan & Co.	2000.	40-3/4	765.00	815.00	50.
10/7/36	" "	8708-891	Issuer	10/9/36	Carlisle Mutschler	2000.	52	1000.00	1040.00	40.
7/10/37	" "	4425	Issuer	6/9/37	Marie Walsh	1000.	51-1/2	460.00	515.00	55.
10/11/37	" "	4128	Issuer	10/13/37	Stein, Brennan & Co.	1000.	44	430.00	440.00	10.
10/28/37	" "	4611	Issuer	10/26/37	Loye, O'Connor & Co.	1000.	44	429.00	440.00	11.

Purchase & Sales by Colonial Securities Company:

3/31/36	Chicago P.O. Service Bldg. Corp., 2nd Mtge. 4 1/2 Income Bonds	C19-20	M. Levy	5/4/37	J. J. Schaefer	200.		40.00	139.50	99.
6/13/36	Columbus P.P. Bldg., Inc., 1st Mtge. 6 1/2 Income Bonds		H. J. Hall	6/13/36	H. Johnson	500.		270.00	275.00	5.
3/31/36	Dallas P.P. Station, Inc., 2nd Mtge. 2 1/2 Income Bonds	455	M. Levy	10/29/34	B. F. Gentry	1000.		200.00	500.00	300.
7/18/36	Ferry Station P.O., Inc., 2nd Mtge. 1 1/2 Income Bonds	2286	M. Walsh	10/29/34	B. F. Gentry	500.		155.00	262.50	107.

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RESPONDENT'S EXHIBIT 3

Copy

MANUFACTURERS TRUST COMPANY
131 East 23rd Street, corner Lexington Ave.
New York, N. Y.

June 2nd, 1930

Mr. Joseph Baumann,
553—6th Avenue,
New York, N. Y.

Dear Sir:

We herewith acknowledge receipt of the following securities received this date:

50 Shs.	Anaconda Copper
200 "	Andes Copper
100 "	Consolidated Gas Co.
50 "	Electric Bond & Share
100 "	General Motors
50 "	Goldman Sachs Trading Corp.
100 "	Kennecott Copper
25 "	Pullman Corporation
300 "	Radio Corporation
116 "	Standard Oil of Indiana
100 "	Texas Gulf
120 "	Tri Continental
55 "	United Gas Impt.
103 "	Utility Power & Light "A"
50 "	Erie Railroad
\$5000.00	City of Tokyo
5000.00	Park Lexington
3000.00	Realty Associates
3000.00	Remington Rand W. W.
10000.00	Republic of Chile
5000.00	Tokyo Electric Light
5000.00	Republic of Columbia
6M 7000.00	United Steel Works Corp. "C" (1M called and cashed—see deposit 6/ 11/30
3000.00	United Steel Works Corp. "A"
5000.00	General Electric of Germany
1000.00	Southern Railway "A"

Yours very truly

George Peters

Respondent's Exhibit 3

I, Joseph Baumann hereby certify that this is an exact copy of receipt given to me by the Manufacturers Trust Company at the time I made the loan to Jacob Kulp & Company.

Joseph Baumann

Sworn to before me this 29th day of November 1946.

Albert B. Leffler

Albert B. Leffler

Notary Public, New York County

N. Y. Co. Clks. No. 66, Reg. No. 332-L-8

Certificate filed in Bronx County

Bronx Co. Clks. No. 8, Reg. No. 135-L-8

Commission Expires March 30, 1948

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JACOB KULP & COMPANY DR.
to
JOSEPH BAUMANN

6/2/30 to 6/21/31
note in Vault

1930			1930		
June 2		\$80,000.00	July 11	Principal	\$5000.00
	4 mos. int. @ 5%	1,355.56		Int. 1 mo. to 7/2-5%	333.33
Oct. 1	4 mos. int. @ 5% on 70M	1,195.83		" " " " "	5.56
			Aug. 12	Principal	5000.00
1931				Int. 80M-5% 7/2-7/14	133.33
Feb. 1	4 mos. int. @ 5% on 70M	1,166.67		" 75M-5% 7/14-8/13	312.50
June 1	4 mos. int. @ 5% on 70M	1,186.11		" 70M-5% 8/13/30-5/1/31	2537.50
Oct. 1	4 mos. int. @ 5% on 55M	939.59	1931		
			June 26	Principal	15000.00
				Int. on 70M-5% from	
				5/1/31-6/26/31	544.44
			Oct. 3	Int. 55M-5% from 5/1/31-	
				10/1/31	1180.55
			Dec. 3	Int. 55M-5% from 10/1/31-	
				12/1/31	458.33
			1932		
			Feb. 1	Int. 55M-6% from 12/1/31-	
				1/31/32	559.16
			Apr. 2	Int. 55M-6% from 2/1-4/1	550.00
			June 2	Principal	2500.00
			" 2	Int. 55M-6% from 4/1-6/1	550.00
			Aug. 2	Int. 52500-6% from 6/1-8/1	525.00
				Principal	2000.00
			Sept. 12	Principal	500.00
			Oct. 2	Int. 8/1-10/1	505.00
			Dec. 10	Int. 10/1-12/1	500.00
			1933		
			Feb. 2	Int. 12/1- 2/1	500.00
			Apr. 2	" 2/1- 4/1	500.00
			June 12	" 4/1- 6/1	500.00
			Aug. 2	" 6/1- 8/1	500.00
			Oct. 16	" 8/1-10/1	500.00
			Dec. 4	" 10/1-12/1	500.00
			1934		
			Feb. 17	Int. 12/1- 2/1	500.00
			Mar. 12	" 2/1- 3/1	250.00
			May 21	" 3/1- 5/1	500.00
			July 25	" 5/1- 7/1	500.00
			Aug. 21	" 7/1- 8/1	250.00
			Oct. 6	" 8/1-10/1	500.00
			Nov. 23	" 10/1-11/1	250.00
			Dec. 8	" 11/1-12/1	250.00
			1935		
			Feb. 15	" 12/1- 3/1	
				\$100. on a/c Mar.	900.00

I, Joseph Baumann, hereby certify that this is an exact copy of my ledger sheet of the account of Jacob Kulp & Company Dr., to Joseph Baumann.

Joseph Baumann

Sworn to before me this 29th day of November 1946.

Albert B. Leffler

Albert B. Leffler

Notary Public, New York County

N. Y. Co. Clks. No. 66, Reg. No. 222-L-8

Certificate filed in Bronx County

Bronx Co. Clks. No. 8, Reg. No. 135-L-8

Commission Expires March 30, 1948

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Respondent's Exhibits 14 and 15

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RESPONDENT'S EXHIBIT 14.

\$50,000.00

Chicago, Ill. November 1, 1937

On demand after date I promise to pay to the order of Joseph Baumann Fifty Thousand and \$00/100 Dollars at New York, New York.

Value received with interest at the rate of six per cent per annum.

Jacob Kulp

Reverse side:

This note is given in lieu of endorsement covering note of Jacob Kulp & Co., dated June 2, 1930, on which unpaid balance is \$50,000. The collateral to said Jacob Kulp & Co. note to be held in connection with this note.

Jacob Kulp

No Int. paid since 3/1/35

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RESPONDENT'S EXHIBIT 15.

Oct. 21, 1937

Mr. Jacob Kulp
6856 South Shore Drive
Chicago, Ill.

Dear Uncle Jack:

As the note I hold of yours is about to expire, would ask you to kindly mail me a new note on receipt of this matter.

No need of writing you any news, as Mozette keeps you posted. All I can say is that business has been very quiet and anything but satisfactory.

Trusting this finds you in good health, and with kindest regards, I remain,

JB:MA

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Resp. Ex. 16

JACOB KULP & COMPANY Dr.
to
JOSEPH BAUMANN

11/1/37 New note in vault
for 50M—signed by JK

6/2/30 to 6/21/31
note in Vault

1930			1930		
June 2		80,000.	July 11	Principal	5,000.
	4 mos. Int. @ 5%	1,355.56		Int. 1mo. to 7/2-5%	333.33
Oct. 1	4 mos. Int. @ 5%		16	" " " "	5.56
	on 70 M	1,195.83	Aug. 12	Principal	5,000.
				Int. 80M-5% 7/2-7/14	133.33
1931				" 75M-5% 7/14-8/13	312.50
Feb. 1	4 mos. Int. @ 5%			" 70M-5% from	
	on 70 M	1,166.67		8/13/30-5/1/31	2,537.50
June 1	4 mos. Int. @ 5%				
	on 70 M	1,186.11	1931	Principal	15,000.
Oct. 1	4 mos. Int. @ 5%		June 26	Int. 70M-5% from	
	on 55 M	939.59		5/1/31-6/26-31	544.44
			Oct. 3	Int. 55M-5% from	
				5/1/31-10/1/31	1,180.55
			Dec. 3	Int. 55M-5% from	
				10/1/31-12/1/31	458.33
			1932		
			Feb. 1	Int. 55M-6% from	
				12/1/31-1/31/32	559.16
			Apr. 2	Int. 55M-6% from	
				2/1-4/1	550.
			Jun. 2	Principal	2,500.
			1932		
			June 2	Int. 55M-6% from	
				4/1-6/1	550.00
			Aug. 2	Int. 52500-6% from	
				6/1-8/1	525.00
				Principal	2000.00
			Sept. 12	"	500.
			Oct. 2	Int. 8/1-10/1	505.
			Dec. 10	" 10/1-12/1	500.
			1933		
			Feb. 2	" 12/1- 2/1	500.
			Apr. 2	" 2/1- 4/1	500.
			Jun. 12	" 4/1- 6/1	500.
			Aug. 2	" 6/1- 8/1	500.
			Oct. 16	" 8/1-10/1	500.
			Dec. 4	" 10/1-12/1	500.
			1934		
			Feb. 17	" 12/1- 2/1	500.
			Mar. 12	" 2/1- 3/1	250.
			May 21	" 3/1- 5/1	500.
			July 25	" 5/1- 7/1	500.
			Aug. 21	" 7/1- 8/1	250.
			Oct. 6	" 8/1-10/1	500.
			Nov. 22	" 10/1-11/1	250.
			Dec. 8	" 11/1-12/1	250.
			1935		
			Feb. 15	Int. 12/1-3/1	
				\$100 on a/c Mar.	900.

RESPONDENT'S EXHIBIT 17

JACOB KULP
100 West Monroe Street
Chicago

Dearborn 8666

October 26, 1937

Dear Joe:

I have your letter of October 21st, and note your statement about the note expiring. I am unable to understand just what you have reference to, as I do not believe there has been any change in the note.

In view of the fact that a new note could not be signed by Jacob Kulp & Co., due to the bankruptcy proceedings, I do not believe it would be advisable to make a change in the note you have which bears my personal endorsement. Of course, you have the stock of the National Realty Trust as collateral which, in my opinion, has greatly improved during the past few years since so many of the companies have been reorganized on such a favorable basis and the ownership of the equity, which is represented by the National Realty Trust, has enhanced in value.

I can, of course, give you a new note signed by me only but, as stated above, I do not believe that would be advisable until the Jacob Kulp & Co. bankruptcy is completed.

I understand the furniture business has been quiet, which, I believe is, likewise, true of many other businesses and, of course, the national and international situation, as well as the securities market, have not helped that situation any.

I trust that this letter finds you real well and with best wishes, I am,

Sincerely,
Uncle Jack

Mr. Jos. Baumann,
S. Baumann & Bros.,
553 Sixth Avenue at 15th Street,
New York, New York.

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RESPONDENT'S EXHIBIT 18

Oct. 28, 1937.

Mr. Jacob Kulp
100 West Monroe St.
Chicago, Ill.

Dear Uncle Jack:

I have your letter of the 26th and contents carefully noted. Nevertheless, I would like to keep my records intact and therefore think that if you will kindly mail me your personal note, I will attach it to the original signed by Jacob Kulp & Co. to complete my files. It is necessary according to the New York State laws, to renew notes periodically and therefore think it advisable for me to have your personal note in my files.

You are right when you say that the furniture business is quiet. In fact, this is the quietest fall we have experienced in our career and from the reports of the different manufacturers' representatives, the business out of town is not keeping the factories running full time as in the past.

I hope you are well, as well as the rest of the family, and with kindest regards from all, I remain,

Sincerely,

JB:MA

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RESPONDENT'S EXHIBIT 19.

JACOB KULP
100 West Monroe Street
Chicago

Dearborn 8666

November 1, 1937.

Dear Joe:

I have your letter of October 28th and, of course, want you to have a note which will comply with the laws of your state.

I am enclosing a note for \$50,000, being the unpaid balance of the principal of the Jacob Kulp & Co. note, which note you are to hold in addition to the one which you now have and substitutions for my endorsement on the Jacob Kulp & Co. note without any charge, however, of the collateral to the note which you now hold.

I am sorry to note that your business is so quiet. Maybe if we get this political situation settled, business

people will have some confidence and they will help restore conditions I think more than anything else.

I am pleased to report that I am well which is, likewise, true of the rest of the family.

With kind regards, I am,

Sincerely,
(Signed) Uncle Jack

Mr. Joseph Baumann,
S. Baumann & Bros.,
553 Sixth Avenue at 15th Street,
New York, New York.

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RESPONDENT'E EXHIBIT 20

S. BAUMANN & BRO.
Home Furnishers Since 1854
3144-8 3rd Avenue
Bronx, N. Y.

December 15th, 1945.

Miss Myrtle Johnson,
100 West Monroe St.,
Chicago, Illinois.

Dear Miss Johnson,

As I am leaving Mr. Baumann's employ today, he has asked me to again write you in reference to Mr. Kulp's loan. All that he is asking for is a new note and he cannot see why this will have any bearing on the cases of the Federal Facilities and the National Realty Trust. It just means extending the old note which Mr. J. B. now now holds, as this is a matter between them, to keep the note in force, he could have the endorsement of Jacob Kulp & Co. attached thereto at a later date.

As yet the check for the interest due on December 15th, on the Park View Manor Bonds has not been received, but trust same will follow shortly.

In the future, kindly address all communications to Mr. J. B. personally at the above address. Any personal correspondence should be addressed to me at 11 West 14th Street, New York, 11, N. Y.

Sincerely,
Ann Bautrop

Since 1845—"The Friendly Credit Store"
Third & Block Aves.
At 160th Street

Third Avenue
At 84th Street

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RESPONDENT'S EXHIBIT 21

December 20, 1945.

Mr. Jacob Baumann
3144—3rd Avenue
Bronx, New York

Dear Joe:

Answering the letter received from your secretary dated December 15, 1945, it appears that you have evidently overlooked the fact that Jacob Kulp & Company went through bankruptcy and that estate was closed.

With respect to the note dated June 2, 1930 for the original principal sum of \$80,000.00 less prepayments and interest that have been made since that date, this letter is intended to acknowledge my continued liability for the balance of the indebtedness evidenced by said note plus accrued interest in accordance with the terms of said note, subject, of course, to such credits as may accrue on account of the ultimate sale, liquidation or other disposition of the securities that are held as collateral to the payment of said note.

You are likewise authorized to accept this letter in the nature of a renewal as well as a ratification by me of my continued liability on the said note with equal effect as if I had executed a new renewal note. I am advised that under the circumstances it is best that you retain the note in its original form and that you hold this letter as evidence of my intention herein expressed.

Very truly yours,

JK:MB

445

RESPONDENT'S EXHIBIT 22

May 22, 1946

Mr. Joseph Baumann
1479 Third Avenue
New York, New York

Dear Joe:

I am enclosing two claim forms, one in the National Realty Trust and one in the Federal Facilities Realty Trust covering accounts which were purchased in the Jacob Kulp & Company bankruptcy matter in 1936, both of which are to be signed by you and returned to me in

the enclosed self-addressed envelope as I want to file the one in the National Realty Trust on Saturday. The claim covering the shares will be signed by Jacob Kulp since they are still in his name and pledged with you as collateral.

I will keep you advised of any progress made in these reorganizations so that you will have full data on same.

With kind personal regards to all, I am,

Very truly yours,

MJ:MB

446

RESPONDENT'S EXHIBIT 41

Chicago, Ill. Oct. 29, 1935—\$2025.00

On demand after date, the undersigned promises to pay to The National Bank of Chicago or its order, at the office of The First National Bank of Chicago in the City of Chicago, for value received Two Thousand Twenty-five Dollars, with interest thereon from Oct. 29, 1935 until paid at the rate of..... per cent, per annum.

To secure the payment of this note, and of any other liability or liabilities of the undersigned to the holder hereof, due to become due, or that may be hereafter contracted or existing, howsoever acquired, by said holder, the undersigned has transferred, pledged and delivered to The First National Bank of Chicago the following property, to-wit:

\$3,000—New York Railway Corp. 6% 1/1/65.

(the market value of which is today \$.....) and now agrees that upon breach of any of the promises herein contained or upon failure to pay any of said other liabilities when due said Bank or the holder hereof may thereupon, or at any time or times thereafter, sell the said property or any part thereof, and any substitute therefor and any additions thereto, at any Brokers' Board, or at public or private sale, without notice, advertisement, or demand of any kind, and may apply the net proceeds after deducting all costs and expenses for collection, sale, and delivery, to the payment of this note or of any or all of said liabilities, returning the residue to the undersigned on demand. Said Bank or the holder hereof may purchase any of said property at any such Brokers' Board or public sale. In case of decline in the market value of said

property or any part thereof, the holder hereof may demand the pledge and delivery of additional property of quality and amount satisfactory to said holder; and the failure on the part of the undersigned to deliver such additional property on demand shall cause this note to become due and payable on demand. In case of the insolvency of the undersigned, any indebtedness due from the holder hereof to the undersigned may be appropriated and applied hereon at any time, as well before as after the maturity hereof.

Paul E. Darrow

Room 1807—100 W. Monroe St.
Chicago

Paid Sept. 9, 1937. Discount Department First National Bank, Chicago.

The undersigned hereby guarantee the payment of the within note. Presentment demand, and notice waived.

Interest paid to	Nov 25	1935
Interest paid to	Dec 25	1935
Interest paid to	Jan 25	1936
Interest paid to	Feb 25	1936
Interest paid to	Mar 25	1936
Interest paid to	Apr 25	1936
Interest paid to	May 25	1936
Interest paid to	Jun 25	1936
Interest paid to	Jul 25	1936
Interest paid to	Aug 25	1936
Interest paid to	Sep 25	1936
Interest paid to	Oct 25	1936
Interest paid to	Nov 25	1936
Interest paid to	Dec 25	1936
Interest paid to	Jan 25	1937
Interest paid to	Feb 25	1937
Interest paid to	Mar 25	1937
Interest paid to	Apr 25	1937
Interest paid to	May 25	1937
Interest paid to	Jun 25	1937
Interest paid to	Jul 25	1937
Interest paid to	Aug 25	1937
Paid May 6	1936	1352.50
Paid Sep 10	1937	672.50

2025.00

RESPONDENT'S EXHIBIT 2

Chicago, Ill. Nov. 12, 1935—\$6837.50

11296

On demand after date, the undersigned promises to pay to The First National Bank of Chicago or its order, at the office of The First National Bank of Chicago in the City of Chicago, for value received Sixty-eight Hundred Thirty-seven and 50/100 Dollars, with interest thereon from Nov. 12, 1935 until paid at the rate of 4 per cent, per annum.

To secure the payment of this note, and of any other liability or liabilities of the undersigned to the holder hereof, due or to become due, or that may be hereafter contracted or existing, howsoever acquired by said holder, the undersigned has transferred, pledged and delivered to The First National Bank of Chicago the following property, to wit:

\$10,000—Internatl Rys of Central America 1st 6½—
2/1/47

2,000 Unione Esperciji Elettric 1st 7% 12/1/56

And other securities heretofore deposited

(the market value of which is today \$.....) and now agrees that upon breach of any of the promises herein contained or upon failure to pay any of said other liabilities when due said Bank or the holder hereof may thereupon, or at any time or times thereafter, sell the said property or any part thereof, and any substitute therefor and any additions thereto at any Brokers' Board, or at public or private sale, without notice, advertisement, or demand of any kind, and may apply the net proceeds, after deducting all costs and expenses for collection, sale, and delivery, to the payment of this note or of any or all of said liabilities, returning the residue to the undersigned. Said Bank or the holder hereof may purchase any of said property at any such Brokers' Board or public sale. In case of decline in the market value of said property or any part thereof, the holder hereof may demand the pledge and delivery of additional property of quality and amount satisfactory to said holder; and the failure on the part of the undersigned to deliver such additional property on demand shall cause this note to become due and payable on demand. In case of the insolvency of the undersigned, any indebtedness due from the holder hereof

to the undersigned may be appropriate and applied herein at any time, as well before as after the maturity hereof.

Paul E. Darrow

Room 1807—100 W. Monroe St
Chicago, Illinois

The undersigned hereby guarantee the payment of the within note. Presentment demand, and notice waived.

Interest paid to Nov 25 1935

Interest paid to Dec 25 1935

Interest paid to Jan 25 1936

Interest paid to Feb 25 1936

Interest paid to Mar 25 1936

Interest paid to Apr 25 1936

Interest paid to May 25 1936

Interest paid to Jun 25 1936

Interest paid to Jul 25 1936

Interest paid to Aug 25 1936

Interest paid to Sep 25 1936

Interest paid to Oct 25 1936

Interest paid to Nov 25 1936

Interest paid to Dec 25 1936

Interest paid to Jan 25 1937

Interest paid to Feb 25 1937

Interest paid to Mar 25 1937

Interest paid to Apr 25 1937

Interest paid to May 25 1937

Interest paid to Jun 25 1937

Interest paid to Jul 25 1937

Interest paid to Aug 25 1937

Interest paid to Sep 25 1937

Interest paid to Oct 25 1937

Interest paid to Nov 25 1937

Interest paid to Dec 25 1937

Interest paid to Jan 25 1938

Interest paid to Feb 25 1938

Interest paid to Mar 25 1938

Interest paid to Apr 25 1938

Interest paid to May 25 1938

Interest paid to Jun 25 1938

Interest paid to Jul 25 1938

Interest paid to Aug 25 1938

Paid May 24 1937 937.50

Paid Sep 9 1937 340.00

Paid Oct 7 1937 1675.00

Paid Apr 30 1938 45.00

Paid Jul 16 1938 3440—

Interest paid to Sep 25 1938

448 DARROW'S EXHIBIT No. 1 of 3/18/47

Chicago, Ill., March 10—1939 \$2600#

On demand after date, the undersigned promises to pay to

The First National Bank of Chicago

33379

or its order, at the office of The First National Bank of Chicago in the City of Chicago, for value received

Twenty-six hundred # Dollars,
with interest thereon from date until paid at the rate of
3½ per cent. per annum.

To secure the payment of this note, and of any other liability or liabilities of the undersigned to the holder hereof, due or to become due, or that may be hereafter contracted or existing, howsoever acquired by said holder, the undersigned has transferred, pledged and delivered to The First National Bank of Chicago the following property, to wit:

Sundry coll

(the market value of which is today \$.....) and now agrees that upon breach of any of the promises herein contained or upon failure to pay any of said other liabilities when due said Bank or the holder hereof may thereupon, or at any time or times thereafter, sell the said property or any part thereof, and any substitute therefor and any additions thereto, at any Brokers' Board, or at public or private sale, without notice, advertisement, or demand of any kind, and may apply the net proceeds, after deducting all costs and expenses for collection, sale, and delivery, to the payment of this note or of any or all of said liabilities, returning the residue to the undersigned on demand. Said Bank or the holder hereof may purchase any of said property at any such Brokers' Board or public sale. In case of decline in the market value of said property or any part thereof, the holder hereof may demand the pledge and delivery of additional property of quality and amount satisfactory to said holder; and the failure on the part of the undersigned to deliver such additional property on demand shall cause this note to become due and payable on demand.

In case of the insolvency of the undersigned, any indebtedness due from the holder hereof to the undersigned may be appropriated and applied hereon at any time, as well before as after the maturity hereof.

Paul E. Darrow
5844 Stony Island Av.
Paul E. Darrow

~~St. Cloud, Fla.~~
100 W. Monroe St.

Address

Paid May 2 1940 Discount Department First National Bank Chicago

The undersigned hereby guarantee the payment of the within note. Presentment demand, and notice waived.

Interest paid to Mar 25 1939
Interest paid to Apr 25 1939
Interest paid to May 25 1939
Interest paid to Jun 25 1939
Interest paid to Jul 25 1939
Interest paid to Aug 25 1939
Interest paid to Sep 25 1939
Interest paid to Oct 25 1939
Interest paid to Nov 25 1939
Interest paid to Dec 25 1939
Interest paid to Jan 25 1940
Interest paid to Feb 25 1940
Interest paid to Mar 25 1940
Interest paid to Apr 25 1940

449

RESP. EXH. 1-4/17/47

Securities Purchased by Mr. Darrow with Proceeds of Personal Loans Made at the First National Bank Aggregating \$11,462.50 and Their Market Value at the Dates Loans Were Paid and Securities Delivered by Mr. Darrow Based on the Prices Being Paid for Similar Securities at Such Dates or the Next Purchase of Similar Securities.

\$ 2,000	Ogden Park	@ 20	\$ 400.00
1,000	La Grange	@ 5½	55.00
5,000	Twenty-Second Street	@ 20	1,000.00
3,000	Roseland	@ 5	150.00
10,500	Villa	@ 6	630.00

5,000	Quincy—2nd Mortgage	@	35	1,750.00
1,500	Irving Park	@	30	450.00
5,000	North Halsted	@	30	1,500.00
3,000	Quincy—2nd Mortgage	@	35	1,050.00
5,000	Parkview Manor	@	25	1,250.00
4,500	Quincy—2nd Mortgage	@	35	1,525.00
600	South Side	@	35	210.00
6,000	Twenty-Second Street	@	30	1,800.00
8,500	Los Angeles	@	15	1,275.00
12,000	Parkview Manor	@	20	2,400.00
4,000	Quincy	@	35	1,400.00
5,000	Columbus	@	40	2,000.00

\$18,845.00

Stricken p. 2467

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

450 DARROW EXHIBIT 3 ADMITTED 5/28/47

In the Matter of

Jacob Kulp & Co., Inc. } No. 63175
Bankrupt

At Chicago, in said District, on the 30th day of October, A. D. 1936, before Archie H. Cohen, Referee:

This matter coming on to be heard upon the petition and supplemental petition of Maurice Klein, Trustee herein, to sell certain property consisting of accounts receivable, stocks, bonds, notes and coupons more fully set forth in Trustee's inventory (except such coupons that were ordered returned pursuant to order of court heretofore entered), it appearing to the court that all creditors have received due notice of this application, and it further appearing to the Court that the highest and best bid in open court was the bid of Michael Tauber & Co. in the sum of \$1,500.00 for all of the Trustee's right, title and interest in and to said accounts receivable, stocks, bonds, coupons, etc., and

It further appearing to the Court that heretofore the Court appointed Thomas Ryan, R. T. Robinson and Bruce Benson, as appraisers, and

It further appearing to the Court that a certain Paul E. Darrow heretofore filed a petition herein in his capacity as Permanent Trustee of a certain Federal Facilities Realty Trust and as Permanent Trustee of a certain National Realty Trust, and as President of and on behalf of a number of corporations, claiming all of said property, more fully described in Trustee's petition and supplemental petition to sell, and

It further appearing that said Darrow, through his attorney and in connection with his said claim to all of said property, requested the Court to setoff against the amount of such property the amounts due by the Bankrupt to the aforesaid Trusts and corporations represented by said Darrow, and the Court being fully advised in the premises,

Now, Therefore, It Is Ordered that the setoff requested by said Darrow be and the same is hereby denied.

It Is Further Ordered and leave is hereby given to the Trustee to accept the bid of Michael Tauber & Co. in the sum of \$1,500.00, for all of the Trustee's right, title and interest in and to the accounts receivable, stocks, bonds, notes, coupons more fully set forth in Trustee's petition and supplemental petition to sell, and

It Is Further Ordered that the Trustee herein execute the necessary bill of sale and assignment for said securities on receipt of said \$1,500.00, and

It Is Further Ordered that Thomas Ryan, R. I. Robinson and Bruce Benson, be allowed the sum of \$15.00 each for services rendered as appraisers in said cause, and

It Is Further Ordered that said \$1,500.00 be held subject to the lien, if any, of said Paul E. Darrow in his aforesaid capacity as Permanent Trustee of the Federal Facilities Realty Trust and as Permanent Trustee of the National Realty Trust, and to the lien of various corporations of which said Darrow acted as President as set forth in his intervening petition heretofore filed herein in these proceedings.

Cohen

Referee

TRUSTEE'S EXHIBIT 7A.

1]	24500	bought by Federal	5/16/38	\$735—OK.
Ferry	25200 2nd	" " "	"	126—OK.
Irving	2000 2nd	" " "	"	300—OK.
Roseland	300	" " "	"	9—OK.
St. Louis	5000 2nd	" " St. L.	"	500—OK.
22nd St.	6000	" " Federal	"	1800—OK.
	1000	" " 22nd St.	"	300—OK.
Villa	3000	" " Federal	"	95.55—OK.
Ogden	3800 (#27-96-130- 202-207-288/90)	bot by Ogden		1140—OK.
Rog Pk	8500	" " Rog. Pk.		2975—OK.
Windsor	2000	bot by NRT	"	400—OK.
	9400	Chairman	"	1880—OK.
	5000	Windsor	"	1000—OK.
Park Vu	32900 2nd	bought by NRT		1157—OK.
M Hal.	100			

5/18/38

12417.55
30.

12447.55

453

TRUSTEE EXHIBIT 4.

Telephone Harrison 2183

Statement

L. A. ROSE & CO.

Insurance

175 West Jackson Boulevard

Chicago, Ill. 6/22/39

J. Kulp
100 W. Monroe St., (Room 1807)
Chicago, Illinois

Commissions on Post Office Building:

Date Pd		Prem.	Comm.
6/20/39	Un. States P.O.	79.15	7.92
"	"	5.33	.53
"	Roseland P. O.	33.34	5.00
"	"	3.80	.95
"	6929 N. Clark Bldg.	50.00	7.50
"	Sta. "D"	225.00	33.75
"	P. E. Darrow	279.12	27.91
"	"	33.02	3.30
			<hr/> 86.86

Returns:

2/16/39	Villa Bldg. (10% Excess		
	Pol. #803415) comm. paid 2/10)		4.20
6/20/39	Un. States Bldg.	50.57	5.06
6/22	Dallas Parcel Post	56.22	8.43
"	Div. & Laverne	11.44	3.43
			<hr/> 21.12

Net Comm. Credit

(Paid Jun 22 1939 L. A. Rose & Co. Per F. B.)

65.74

TRUSTEE'S EXHIBIT 5.

Chicago, December 11th, 1941

National Realty Trust (etal)

100 W. Monroe St.

L. A. ROSE & CO.

Insurance Agency

Telephone Harrison 2183

Insurance Exchange
Chicago, Ill.

Jacob Kulp

Date	Policy	Company	Property	Amount	Rate	Premium
12/5/41	49286	Royal Ind.	Boiler	3 40000.		1334.98
3 Yrs.				To Fed.Tr.		41.73
						1293.25
	Armour	175.75	4.91	180.66	33.60	
	Austin	76.12	2.14	78.26		
	Berwyn	103.05	2.89	105.94		
	Crandon	83.00	2.33	85.33		
	Div. & Lav.	57.05	1.59	58.64		
	Sta. F	88.05	2.45	90.50		
	Gr. Rap.	66.91	1.87	68.78		
	LaGrange	77.55	2.17	79.72	14.40/2.70	68.02
	Los Ang.	62.75	1.75	64.50	32.00	
	Dg. Pk.	43.50	1.29	47.79		
	Pview	75.75	2.20	77.95		
	Rog. Pk	61.55	1.73	63.28		
	Windsor Pk.	283.95	7.95	291.90		
		1,257.98	35.27	1,293.25	80.00	
						193.99

(Paid Jan 13 1942 L. A. Rose & Co. By JS)

Please make all checks payable to L. A. Rose & Co. whose cashier alone is empowered to receipt this bill.

455

TRUSTEE'S EXHIBIT 6.

Credit Memorandum

National Realty Trust

Chicago 12/11/41, 193....

100 W. Monroe St.

L. A. Rose & Co.

Insurance Agency

Telephone Harrison 2183

Insurance Exchange
Chicago, Ill.

J. Kulp

Date	Policy	Company	Property	Amount	Return Premium
12/1	41401	Royal Indemnity	Boiler	3	80.00

(Suspension Endorsement)

Arm 33.60

L.A. 32.00

LaG. 14.40

PAID

JAN 12 1942

L. A. ROSE & CO.

By JS.

Exp. 12/5/41

CREDIT

12-

TRUSTEE'S EXHIBIT 9.

SECURITIES PURCHASED FOR
PAUL E. DARROW CHAIRMAN ACCOUNT

Date Purchased	Par Value	Purchase Price	Bought From	Cost	Excess of Purchase price paid by Paul E. Darrow over cost
Berwyn Post Office Building Corporation (Second Mortgage)					
1/16/36	\$ 500	7	\$ 35.00 Colonial Securities Co.	@ 6	\$ 30.00 \$ 5.00
Columbus Parcel Post Building, Inc. (First Mortgage Leasehold Bonds)					
11/13/36	\$1500	82½	\$1237.50 Colonial Securities Co. bought from G. P. Lyle & Co.	@ 63½	\$952.50 \$285.00
11/13/36	\$ 500	80	\$ 400.00 Colonial Securities Co. bought from G. P. Lyle & Co.	@ 63½	\$317.50 \$ 82.50
3/20/41	\$1000	99	\$ 990.00 Myrtle Johnson who acquired:)	
	(1/1/42 maturity)		\$500 on 1/19/37 from Grace Marshall @ 60 which bond originally sold 3/11/35 to Grace Marshall's mother @ 42.)	
			\$500 acquired from George Peterson @ 100 originally bought in 1928.)	\$800.00 \$190.00
Irving Park Post Office Building Corporation (First Mortgage)					
4/10/39	\$ 500	41	\$ 205.00 Colonial Securities Co. bought from Lowell Niebohr & Co.	@ 36	\$180.00 \$ 25.00
Quincy Station Post Office Building Corporation (First Mortgage)					
10/18/35	\$3000	37½	\$1132.50 Colonial Securities Co. bought:		
			\$1000 from Kneeland & Co. 8/18/35	@ 33	\$330.00)
			\$2000 from Stein Berman & Co. 10/18/35	@ 40%	\$115.00) \$ 12.50

INSURANCE RECORD

6745, Brandon Ave. Bldg. 804

Polina To

Chicago Title & Trust Co.

DATE OF POLICY			NAME OF COMPANY	POLICY NUMBER	EXPIRATION			TERMINATED			AMOUNT OF POLICY	DISTRIBUTION OF POLICY		
MO.	DAY	YEAR			MO.	DAY	YEAR	MO.	DAY	YEAR		NO.	DAY	YEAR
1	7	33	Std. Acc.	521153	1	7	36				10/21	Public Liability	Acc.	
2	1	34	Std. Acc.	521153	2	1	36					Comp.	10/21	
3	20	34	Auto Fire	521153	3	20	36				2500.00	Auto	7/31	
10	1	34	Std. Acc.	521153	10	1	36				1000.00	Auto	10/21	

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TRUSTEE EX. 11 IN EVIDENCE

Chicago, September 17th, 1942Federal Facilities Healty Trust, Paul E.
Darrow, Permanent Trustee & Villa Bldg. Corp.2366 East 69th St.

L. A. ROSE & CO.

Telephone Harrison 2183 Insurance Agency
J. Kulp Insurance Exchange
Chicago, Ill.

Date	Policy	Company	Property	Amount	Rate	Premium
9/20/42	5364	Equitable	Fire & Theft 3 15000. \$50.00 Ded.Coll.			41.00 74.00 115.00
			(above loc.)			41.00

10-15-42
#1396PAID
OCT 16 1942

L.A. ROSE & CO.

By 

17.25

Please make all checks payable to L. A. Rose & Co. whose cashier alone is
empowered to receipt this bill.

15335

transit x 12 sheets
3/20/47

RECAPITULATION

	PERIOD PAID TO L. A. ROSE & CO.		FOR TRUCKS PAID TO JACOB KULP BY L. A. ROSE & CO.	
ARMOUR STATION BLDG. CORP.	8/24/35 to 3/27/43	1,557.03	Credit 348.05 76.41	269.68
AUSTIN STATION BLDG. CORP.	7/26/35 to 3/27/43	6,701.77	Credit 1,629.80 174.77	1,454.43
BETHLEHEM POST OFFICE BLDG. CORP.	8/17/35 to 3/15/43	1,123.40	Credit 264.19 70.66	183.53
CHICAGO POST OFFICE BLDG. CORP.	12/8/35 to 2/18/43	24,558.05	Credit 3,685.26 1,739.99	1,945.27
COLUMBUS PARCEL POST BLDG. CORP.	6/17/35 to 3/1/43	3,382.64	Credit 389.89 76.76	313.13
6829 E. CLARK STREET BLDG. CORP.	7/12/35 to 4/15/43	3,690.72	Credit 978.64 30.29	948.35
8748 GRANDON AVE. BLDG. CORP.	8/7/35 to 8/7/43	3,725.74	Credit 781.83 11.66	769.99

Transit
pages

58334-58335

 trustee 1/2
 admitted
 5/24/47
RECAPITULATIONPREMIUM PAID TO L. A.
ROSE & CO.COMMISSION PAID TO JACOB KULP
BY L. A. ROSE & CO.

STATION D POST OFFICE BLDG. CORP.	12/6/35 to 9/22/42	\$ 1,100.79	Credit	177.11 14.53	162.58
DALLAS PARCEL POST STATION INC.	12/5/35 to 4/29/43	4,048.11	Credit	498.62 106.46	392.16
DIVISION & LAVERGNE BLDG. CORP.	10/14/35 to 9/16/41	1,229.18	Credit	265.07 32.36	232.71
FERRY STATION POST OFFICE BLDG. CORP.	11/13/35 to 7/29/43	5,813.00	Credit	609.30 49.68	559.62
GRAND RAPIDS PARCEL POST BLDG. CORP.	11/3/35 to 2/3/42	586.67	Credit	117.75 5.29	112.46
IRVING PARK POST OFFICE BLDG. CORP.	12/5/35 to 3/27/43	1,475.85	Credit	388.71 .47	388.24
LA GRANDE POST OFFICE BLDG. CORP.	6/11/35 to 9/3/42	723.23	Credit	188.87 5.76	183.11
LOS ANGELES SERVICE STATION INC.	12/14/35 to 3/30/42	2,812.88	Credit	297.63 7.00	290.63

 Trustee
 admitted
 5/24/47

414

66 334 -
58 335

transferred X12 B
admitted
5/24/47

RECAPITULATION

		<u>PREMIUM PAID TO L. A. ROSE & CO.</u>	<u>COMMISSION PAID TO JACOB KULP BY L. A. ROSE & CO.</u>
MC KINLEY PARK STATION BLDG. CORP.	6/11/35 to 3/27/43	1,445.45	Credit 259.66 13.76 245.90
NORTH HALSTED STREET POST OFFICE BLDG. CORP.	6/27/35 to 9/16/41	1,293.65	Credit 262.24 2.89 259.35
OGDEN PARK POST OFFICE BLDG. CORP.	7/5/35 to 3/27/43	3,889.03	Credit 819.65 144.64 675.01
PARKVIEW MANOR BLDG. CORP.	5/1/35 to 5/25/43	5,895.35	Credit 1,554.45 122.04 1,432.41
POSTAL FACILITIES INC.	12/5/35 to 3/1/43	2,235.98	Credit 321.74 6.66 315.08
ROSLAND POST OFFICE BLDG. CORP.	10/16/35 to 11/5/42	1,085.39	Credit 230.18 5.43 224.75
SOUTH SIDE POST OFFICE BLDG. CORP.	10/15/35 to 3/27/43	1,956.05	527.15 527.15
TWENTY-SECOND STREET STATION BUILDING CORP.	5/23/35 to 3/27/43	1,517.20	Credit 350.09 .46 349.63

transferred
5/24/47
412

413

58334-58535

trucks
+ 122.00
5/24/47

RECAPITULATION

	<u>PREMIUM PAID TO L. A. ROSE & CO.</u>		<u>COMMISSION PAID TO JACOB KULP BY L. A. ROSE & CO.</u>		
UNITED STATES BLDG. CORP.	6/15/35 to 3/1/43	17,875.93	Credit	1,823.98 298.70	1,525.28
VILLA BLDG. CORP.	2/20/35 to 3/27/43	2,295.59	Credit	409.11 12.72	396.39
HENDERSON UNICOR BLDG. CORP.	10/13/35 to 7/26/43	5,345.09	Credit	1,234.21 161.12	1,073.09
QUINCY STATION BLDG. CORP.	12/5/35 to 3/27/43	4,907.48	Credit	729.06 42.22	686.84
PAUL E. CARROL TRUSTEE FOR FEDERAL FACILITIES REALTY TRUST	7/2/35 to 7/28/43	1,283.30		245.40	245.40
			Total - -	16,145.83	

Franklin
Aug 72

Continental Illinois National Bank
AND TRUST COMPANY
Chicago, Ill.
\$1500.00
to T. F. Adams
2/2/46
DOLLARS 2

Continental Illinois National Bank
AND TRUST COMPANY
Chicago, Ill.
\$1000.00
to T. F. Adams
2/2/46
DOLLARS 1000

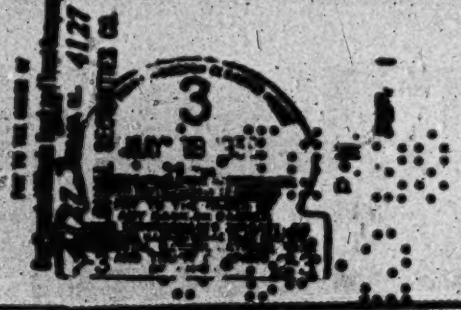
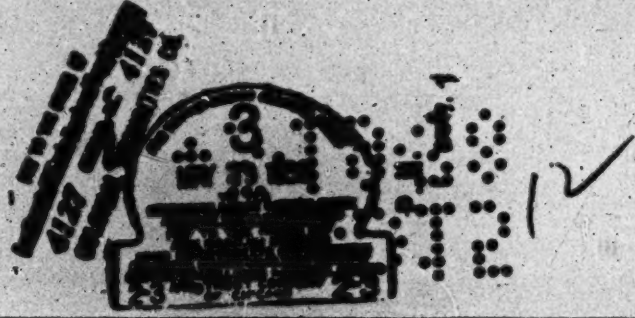
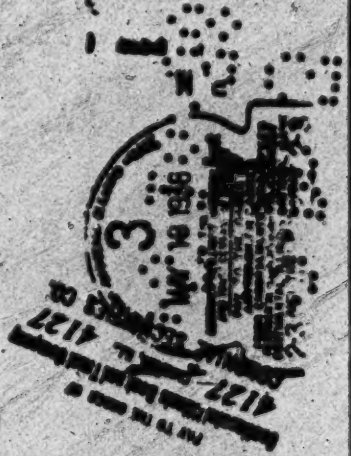
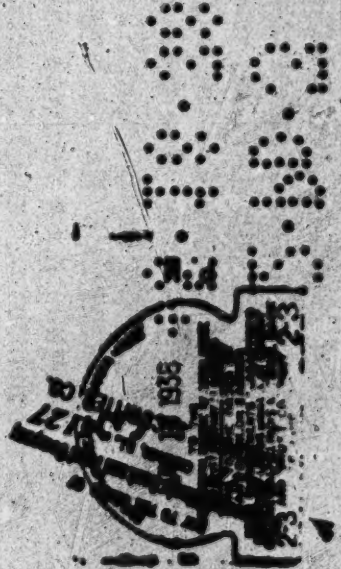
Continental Illinois National Bank
AND TRUST COMPANY
Chicago, Ill.
\$500.00
to T. F. Adams
2/2/46
DOLLARS 500

Continental Illinois National Bank
AND TRUST COMPANY
Chicago, Ill.
\$100.00
to T. F. Adams
2/2/46
DOLLARS 100

Continental Illinois National Bank
AND TRUST COMPANY
Chicago, Ill.
\$500.00
to T. F. Adams
2/2/46
DOLLARS 500

Continental Illinois National Bank
AND TRUST COMPANY
Chicago, Ill.
\$300.00
to T. F. Adams
2/2/46
DOLLARS 300

The Northern Trust Company
Chicago, Ill.
\$200.00
to T. F. Adams
2/2/46
DOLLARS 200



467

TRUSTEE'S EXHIBIT 1.**TRUSTEE'S BILL OF SALE.**

Know All Men By These Presents, that I, Maurice Klein, Trustee in Bankruptcy of the Estate of Jacob Kulp & Co., Inc., cause No. 63175, pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division, in consideration of the sum of Fifteen Hundred Dollars (\$1500.00), in hand paid, the receipt of which is hereby acknowledged, and pursuant to an order of said Court entered on the 30th day of October, A. D. 1936, before Archie H. Cohen, Referee in Bankruptcy, do hereby grant, bargain and sell unto Michael Tauber and Company, of Chicago, Illinois, all of my right, title and interest as Trustee, in and to all accounts receivable stocks, bonds and securities (except such coupons that were returned pursuant to order of Court heretofore entered) belonging to the bankrupt corporation, as more fully appears from Trustee's inventory on file in cause No. 63175, pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division.

In Witness Whereof, I have hereunto set my hand and seal this 5th day of November, A. D. 1936.

Maurice Klein (Seal)
Trustee in Bankruptcy of the Estate
of Jacob Kulp & Co., Inc., a corp.,
Cause No. 63175.

468

TRUSTEE'S EXHIBIT 2.

Know All Men By These Presents: that Michael Tauber & Company, a corporation, of Chicago, Illinois, in consideration of \$10.00 and other valuable consideration to it in hand paid, hereby sells, assigns, transfers and conveys to Paul Darrow, Trustee of Federal Facilities Realty Trust and National Realty Trust, all its right, title and interest in and to certain accounts receivable as more fully described in Exhibit "A" attached hereto and made a part hereof, these accounts receivable being part of the same accounts receivable transferred to Michael

Tauber & Company by Maurice Klein as Trustee in bankruptcy of Jacob Kulp & Co.

Dated at Chicago, this 5th day of November, A. D. 1936.

Michael Tauber & Company,
By.....

469

TRUSTEE'S EXHIBIT 2-A.

Division & LaVergne Building Corporation First Mortgage coupons	\$ 15.25
Postal Facilities, Inc., Second Mtge. coupons....	10,655.50
Ogden Park Post Office Building Corporation First Mortgage coupons	8,369.00
Rogers Park Post Office Station Building Corporation First Mortgage coupons	10,114.53
Crandon Shore Building Corporation First Mtge. coupons	2,600.75
Windsor Shore Building Corporation First Mtge. coupons	2,977.25
Windsor Shore Building Corporation Second Mtge. coupons	455.00
Irving Park Post Office Building Corporation First Mortgage coupons	16.25
North Halsted Post Office Building Corporation First Mortgage coupons	70.60
Roseland Building Corporation First Mortgage coupons	344.10
United States Building Corporation 1st Mtge. coupons	2.50
United States Building Corporation Second Mortgage coupons	156.25
Villa Building Corporation First Mortgage coupons	16.25
South Side Post Office Service Building Corporation First Mortgage coupons.....	105.25
including the books and records of Jacob Kulp & Co.	
Rec'd Melvin Goldman 11/5/36	

470

TRUSTEE'S EXHIBIT 4.

4/10/46

Number 248

**CONTINENTAL ILLINOIS NATIONAL BANK
(2-3) AND TRUST COMPANY (2-3)
of Chicago**

Chicago, Nov. 5, 1936—\$800.00

Pay to the order of Michael Tauber & Co. Eight Hundred and no/100 Dollars.

Myrtle Johnson

Stamp—Accepted Nov 6 1936 No 010950 Continental Illinois National Bank and Trust Company of Chicago.

471

TRUSTEE'S EXHIBIT 14

Admitted 5/28/47

**IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division**

(Caption—No. 63175)

INTERVENING PETITION OF PAUL E. DARROW

To the Honorable Archie H. Cohen, Referee in Bankruptcy:

Now Comes Paul E. Darrow, and respectfully represents as follows:

1. He files this, his intervening petition, pursuant to leave of this Honorable Court first had and obtained.

2. He was on, to-wit, May 24, 1935 appointed Permanent Trustee of Federal Facilities Realty Trust, a common law trust, in proceedings pending under Section 77 B of the Bankruptcy Act in the United States District Court for the Northern District of Illinois, Eastern Division, as case No. 58334, duly qualified as such Permanent Trustee and is now acting as such.

3. He was on to-wit, June 21, 1935 appointed Permanent Trustee of National Realty Trust, a common law trust, in proceedings pending under Section 77 B of the Bankruptcy Act in the United States District Court for the Northern District of Illinois, Eastern Division, as case

No. 58335, duly qualified as such Permanent Trustee and is now acting as such.

4. As Trustee aforesaid of Federal Facilities Realty Trust, he holds all of the beneficial interest in and voting rights to all of the issued and outstanding capital stock of the following corporations:

472 Chicago Post Office Service Building Corporation
Columbus Parcel Post Building Corporation
Station "D" Post Office Building Corporation
Dallas Parcel Post Station, Incorporated
Ferry Station Postoffice, Incorporated
Irving Park Post Office Building Corporation
McKinley Park Station Building Corporation
North Halsted Post Office Building Corporation
Quincy Station Post Office Building Corporation
Roseland Building Corporation
United States Building Corporation
South Side Post Office Service Building Corporation
Twenty-Second Street Station Building Corporation
Villa Building Corporation

5. As Trustee as aforesaid of National Realty Trust, he holds all of the beneficial interest in and voting rights to all of the issued and outstanding capital stock of the following corporations:

Postal Facilities, Incorporated
Armour Station Building Corporation
Austin Station Building Corporation
Berwyn Post Office Building Corporation
Division & LaVergne Post Office Building Corporation
Grand Rapids Parcel Post Corporation
LaGrange Post Office Building Corporation
Ogden Park Post Office Building Corporation
Park View Manor Building Corporation
6929 North Clark Street Building Corporation
Windsor Shore Building Corporation
6748 Crandon Avenue Building Corporation

6. He is a member of the Board of Directors and is also the president and treasurer of each of the above named corporations.

7. Reorganization under Section 77 B of the Bankruptcy Act has been had or is now being made for many of the said corporations and for the two said trusts. Under the terms of many of such reorganization plans

all unpaid interest was or is to be cancelled or waived. The time within which claims could be filed has passed in many of said reorganization proceedings.

8. Jacob Kulp & Co., Inc., the bankrupt herein, is indebted to Paul E. Darrow as Permanent Trustee of the said National Realty Trust and of the said Federal Facilities Realty Trust, and is indebted to a number of the above named corporations in the amount of approximately \$494,366.43, as more particularly set forth herein:

473 Armour Station Building Corporation	\$ 6,494.55
Austin Station Building Corporation	24,246.84
Chicago Post Office Service Building Corporation	88,129.91
Columbus Parcel Post Building Corporation	32,439.88
Station "D" Post Office Building Corporation	2,922.85
Dallas Parcel Post Station, Incorporated	40,226.80
Division & LaVergne Post Office Building Corporation	7,578.77
Ogden Park Post Office Building Corporation	6,176.95
Quincy Station Post Office Building Corporation	172,156.50
Rogers Park Post Office Building Corporation	12,295.80
Roseland Building Corporation	2,723.60
United States Building Corporation, St. Louis	23,368.24
South Side Post Office Service Building Corporation	10,036.03
Twenty-Second Street Station Building Corporation	36,474.35
Villa Building Corporation	3,283.39
Windsor Shore Building Corporation	4,383.42
Paul E. Darrow, Trustee	1,428.55

9. Claims have heretofore or will hereafter be filed in the bankruptcy proceedings for the aforesaid amounts.

10. Maurice Klein, Trustee in Bankruptcy herein, has heretofore filed his Petition To Solicit Bids for various assets of Jacob Kulp & Co., Inc., including particularly the bonds and interest coupons of many of the aforesaid corporations, and a return of bids for such assets is set for hearing before this Honorable Court on to-wit, August 12, 1936.

11. Your Petitioner is informed and believes, and upon such information and belief alleges the fact to be that the bankrupt acted as agent for the corporations and trusts heretofore named during the period from to-wit, 1930 to 1933, for the purpose of collecting rents and income due to said corporations and trusts; that it commingled funds thus collected with its own funds; that its own funds were small in amount and that the majority of funds in its possession were funds properly belonging to said corporation and trusts; that such funds were
474 used by the bankrupt for the purchase of bonds and interest coupons of most of the said corporations; and that such purchases were made at or subsequent to the maturity of such interest coupons; and that such interest coupons should have been cancelled when purchased.

12. Your Petitioner charges that the aforesaid bonds and interest coupons of said corporations and trusts should be cancelled as aforesaid; that in the event they are not cancelled, all assets of Jacob Kulp & Co., Inc. should be impressed with a trust in favor of the aforesaid corporations and trusts to the extent of such bonds and coupons now proposed to be sold as aforesaid; and that all claims of the aforesaid corporations and trusts against the bankrupt are entitled to priority over other claims against the bankrupt.

Wherefore, your Petitioner prays that an order may be entered herein:

1. Directing Maurice Klein, Trustee in Bankruptcy herein, to cancel all the bonds and interest coupons evidencing an alleged indebtedness to Jacob Kulp & Co., Inc., bankrupt, of the Federal Facilities Realty Trust, the National Realty Trust and the aforesaid corporations, or in the alternative, that such bonds and coupons be delivered up to your Petitioner for cancellation.

2. Directing that no sale of any of the aforesaid bonds or coupons be had in these proceedings pending the determination herein of the rights of the trusts and corporations represented herein by your Petitioner.

3. Impressing a trust in favor of the trusts and corporations represented by your Petitioner against all of the aforesaid notes, bonds and interest coupons now proposed to be offered for sale.

4. Directing all claims filed herein on behalf of
475 the trusts and corporations represented by your Pe-

Amendment to Intervening Petition of Paul E. Darrow 425

tioner be paid out of the assets of the estate prior to payment of other claims herein.

5. Directing that any sale of the aforesaid notes, bonds and coupons be made subject to all of the rights of the trusts and corporations represented by your Petitioner.

6. Granting such other and further relief to your Petitioner as to this Honorable Court shall seem meet.

.....(Seal)

District Court of the United States }
State of Illinois } ss.
County of Cook }

Paul E. Darrow, being first duly sworn, on oath deposes and says that he has read the above and foregoing Petition by him subscribed, knows the contents thereof, and that the same is true, except as to matters stated upon information and belief, and as to such matters he believes it to be true.

.....
Subscribed and Sworn to before me
this 5th day of August, A. D. 1936.

.....
Notary Public

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IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

(Caption—No. 63175)

**AMENDMENT TO INTERVENING PETITION
OF PAUL E. DARROW**

To the Honorable Archie E. Cohen, Referee in Bankruptcy:

Now comes Paul E. Darrow and respectfully represents that he files this his Amendment To Intervening Petition of Paul E. Darrow, pursuant to leave of this Honorable Court first had and obtained.

Section 8 as found on page 3 of the Intervening Petition of Paul E. Darrow heretofore filed herein on August 10, 1936 shall be and is hereby amended to read as follows:

426 Amendment to Intervening Petition of Paul E. Darrow

"Jacob Kulp & Co., Inc., the bankrupt herein, is indebted to Paul E. Darrow as Permanent Trustee of the said National Realty Trust and of the said Federal Facilities Realty Trust, and is indebted to a number of the above named corporations in the amount of approximately \$490,947.56, as more particularly set forth herein:

Federal Facilities Realty	\$ 3,006.25
Chicago Post Office Service Building Corporation	88,221.47
Columbus Parcel Post Building Corporation	32,641.88
Station "D" Post Office Building Corporation	4,196.72
Dallas Parcel Post Station, Incorporated	40,256.80
Ferry Station Postoffice, Incorporated	26.25
Irving Park Post Office Building Corporation	72.50
McKinley Park Station Building Corporation	178.75
North Halsted Post Office Building Corporation	26.25
477 Quincy Station Post Office Building Corporation	172,224.75
Roseland Building Corporation	3,012.85
South Side Post Office Service Building Corporation	10,146.53
Twenty-Second Street Station Building Corporation	37,449.52
United States Building Corporation	23,858.74
Villa Building Corporation	4,388.39
Armour Station Building Corporation	6,554.55
Austin Station Building Corporation	24,270.84
Berwyn Post Office Building Corporation	80.00
6748 Crandon Avenue Building Corporation	340.50
Division & LaVergne Post Office Building Corporation	7,623.77
Postal Facilities, Incorporated	16.25
Grand Rapids Parcel Post Corporation	20.00
LaGrange Post Office Building Corporation	20.00
United States Service Station	251.00
Ogden Park Post Office Building Corporation	6,461.95
Park View Manor Building Corporation	6,885.60

6929 North Clark St. Building Corporation	12,705.23
Windsor Shore Building Corporation	4,581.67
Paul E. Darrow, Trustee	1,428.55
.....	(Seal)

District Court of the United States }
 State of Illinois } ss
 County of Cook }

Paul E. Darrow, being first duly sworn, on oath deposes and says that he has read the foregoing amendment to petition by him subscribed, knows the contents thereof and that the same is true, as he verily believes.

.....
 Subscribed and Sworn to before me
 this 15th day of September, 1936.

.....
 Notary Public

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TRUSTEE'S EXHIBIT 1.

VARIOUS ITEMS REPRESENTING MONEY TRANSFERRED FROM THE BANK ACCOUNT OF DALLAS PARCEL POST CO. TO THE ACCOUNT OF JACOB KULP & CO.

January 5, 1927	\$5,000.00
October 1, 1927	5,000.00
October 24, 1927	4,000.00
June 5, 1928	3,000.00
March 20, 1929	3,000.00
May 14, 1929	3,000.00
July 10, 1929	2,000.00
September 11, 1929	2,000.00
January 29, 1930	2,800.00
February 4, 1930	1,000.00
March 29, 1930	1,000.00
May 7, 1930	2,500.00
June 24, 1930	1,000.00
July 14, 1930	1,000.00
August 13, 1930	1,000.00
September 15, 1930	1,000.00
October 14, 1930	1,000.00

Trustee's Exhibit 2

December 6, 1930	1,500.00
January 8, 1931	1,000.00
February 1, 1931	1,000.00
March 4, 1931	1,000.00
April 3, 1931	1,000.00
May 8-11, 1931	1,250.00
June 3, 1931	1,000.00
July 15, 1931	500.00
August 14, 1931	1,000.00
September 15, 1931	1,000.00
October 16, 1931	1,000.00
November 5-20, 1931	1,000.00
December 11, 1931	750.00
January 7, 1932	800.00
February 6, 1932	1,000.00
March 8, 1932	1,000.00
April 7, 1932	1,000.00
May 13, 1932	1,000.00
June 25, 1932	200.00
August 5, 1932	1,900.00
September 8, 1932	800.00
October 11, 1932	5,000.00
April 7-15, 1933	5,000.00
May 5-16, 1933	4,500.00
June 2-9, 1933	4,950.00
July 8-14, 1933	5,000.00
	<hr/>
	\$84,450.00

TRUSTEE'S EXHIBIT 2.

VARIOUS ITEMS REPRESENTING MONEY TRANSFERRED FROM THE BANK ACCOUNT OF POSTAL FACILITIES, INC. TO THE ACCOUNT OF JACOB KULP & CO.

February 8, 1929	\$3,000.00
June 11, 1931	250.00
September 15, 1931	250.00
March 25, 1932	600.00
April 7, 1932	700.00
November 22, 1932	150.00
December 17, 1932	100.00
January 9, 1933	500.00

March 18, 1933	500.00
April 6-15, 1933	1,500.00
May 5, 1933	500.00
June 5-9, 1933	575.00
July 14, 1933	275.00
August 4-16, 1933	600.00
September 11, 1933	400.00
	<hr/>
	\$9,800.00

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TRUSTEE'S EXHIBIT 3.

VARIOUS ITEMS REPRESENTING MONEY TRANSFERRED FROM THE BANK ACCOUNT OF FERRY STATION POST OFFICE CO. TO THE ACCOUNT OF JACOB KULP & CO.

December 16, 1925	\$1,500.00
May 7, 1926	1,000.00
June 9, 1925	1,500.00
July 9, 1926	1,500.00
October 13, 1926	2,320.07
December 10, 1926	1,038.00
January 5, 1927	2,000.00
February 23, 1927	890.48
September 20, 1927	5,500.00
February 24, 1928	1,799.85
November 15, 1928	7,000.00
December 19, 1928	1,500.00
March 20, 1929	7,000.00
April 22, 1929	1,000.00
July 10, 1929	3,500.00
September 12, 1929	3,000.00
November 23, 1929	2,000.00
January 2, 1930	3,000.00
February 4, 1930	2,500.00
March 29, 1930	1,200.00
April 16, 1930	1,500.00
May 16, 1930	1,500.00
July 14-17, 1930	2,500.00
August 6, 1930	1,000.00
September 9, 1930	2,000.00
	<hr/>
	\$59,248.40

October 3, 1930	\$ 1,000.00
November 18, 1930	2,000.00
December 6, 1930	1,500.00
January 15, 1931	500.00
February 1, 1931	1,500.00
March 2, 1931	1,000.00
April 3-7, 1931	1,500.00
May 4-16, 1931	1,400.00
June 11, 1931	500.00
July 3, 1931	1,500.00
August 5, 1931	1,500.00
September 3-15, 1931	1,250.00
October 2, 1931	1,500.00
March 6, 1932	500.00
April 11-19, 1932	12,500.00
May 25, 1932	1,000.00
June 9-17, 1932	1,500.00
July 12, 1932	900.00
August 5, 1932	1,500.00
May 8-9, 1933	1,600.00
June 5-9, 1933	1,700.00
July 7, 1933	1,500.00
August 4-16, 1933	1,650.00
September 11, 1933	1,200.00
	<hr/>
	\$42,200.00

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S E C X 1.

Copy

5/19/38

Received from Louis Goldman \$24,203.55 being payment in full for all of the bonds and securities this day purchased by the undersigned under court order in case of Seligman et al vs Kulp et al #35S11241—being same securities referred to in receipt of John F. Bolton, Special Commissioner, Superior Court of Cook County.

Michael Tauber & Co.

(Signed) By Richard Levy, Pres.

COPY

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EXHIBIT

SEC EXHIBIT 2

SELLING PRICE OF SECURITIES
IN LOT 1 NOT DELIVERED TO DARR

7/26/47

	<u>Par Value</u>	<u>Price</u>	<u>Total</u>
5/15/38 <u>Austin 1st Mtze bonds</u> W. Walsh	\$2,000	45	\$ 900.00
6/20/38 G. H. McLain	2,500	45	1,125.00
7/9/38 C. Steinbach	2,100	47-1/2	997.50
11/14/38 G. H. McLain	500	45	225.00
11/23/41 W. Zerbst	<u>1,000</u> 8,100	45	450.00
9/30/38 <u>Austin 2nd Mtze. bonds</u> A. M. Powell	\$3,000	30	900.00
11/3/38 A. Koenig	1,000	30	300.00
11/14/38 L. Blair	<u>6,000</u> \$10,000	30	1,800.00
5/25/38 <u>Grandon</u> W. Walsh	\$ 6,000	30	1,800.00
8/17/38 Fred Gradiolph	3,000	30	900.00
9/1/38 Jane Baumann	8,000	30	2,400.00
5/18/38 Geo. Peterson	4,000		350.00
5/19/40 National Realty Trust	<u>200</u> \$21,200	30	60.00
5/31/39 <u>Station "P"</u> P. Almeroth	\$10,000	29	2,900.00
Max Levy	<u>6,000</u> \$16,000		
5/21/38 <u>Parkview Manor</u> Marie Walsh	\$ 1,000	25	250.00
5/25/38 Chas. V. Powell	1,000	30	300.00
5/25/38 A. M. Powell	6,000	30	1,800.00
6/30/38 Winnie Newman	3,000	30	900.00
10/17/38 C. Juliussen	3,000	30	900.00
5/1/40 Parkview Manor Bldg. Co.	<u>1,000</u> \$15,000	20	200.00
Amount received from Mr. Darr			<u>12,147.55</u> \$31,905.05

580 p. 8 pages

**FEDERAL FACILITIES REALTY TRUST
SECURITY TRANSACTIONS BY
COLONIAL SECURITIES COMPANY WITH FEDERAL FACILITIES REALTY TRUST ON SUBSIDIARIES
MAY 24, 1935 to December 31, 1941**

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	(DIFF. bet. cost (and selling Cost (Price
2/14/36	Chicago P.O. Service Bldg. Corp., 1st Mg. 35 Cn. Income Bonds	M66- 667	Issuer	2/14/36	Satre Bros.	\$2000.	36	\$ 780.00	\$ 720.00 \$ 60.00
11/1/37	" "	M541- 542	Issuer	11/1/37	Herbert E. Greene & Co.	2000.	27½	560.00	550.00 10.00
1/20/38	" "	M97-273- 274-689- 690	Issuer	1/20/38	G. L. Chr- stian & Co.	3000.	30	1537.50	1512.50 25.00
6/14/37	" "	M814- 108	Issuer	6/14/37	S. Levy	2000.	32	640.00	600.00 40.00
6/14/37	" "	M287/8	Issuer	6/14/37	M. Levy	2000.	32	640.00	600.00 40.00
11/13/36	Columbus P.F. Bldg., Inc. 1st Mg. 6½ Income Bonds	275- 276	Federal	11/13/36	G. P. Lyle & Co.	1000.	63½	700.00	635.00 65.00
11/24/36	" "	234	Federal	11/25/36	G. P. Lyle & Co.	500.	63½	387.50	317.50 70.00
11/24/36	" "	277- 278	Federal	11/25/36	G. P. Lyle & Co.	1000.	63½	700.00	635.00 65.00
11/24/36	" "	306- 307-445- 448-450- 460-463- 275-276	Federal	11/25/36	G. P. Lyle & Co.	3700	63½	2553.00	2349.50 203.50
9/15/37	" "	314- 315-348	Issuer	8/31/37	Lister, Carter & Co.	300.	45	150.00	135.00 15.00
11/13/36	" "	174- 175	Darrow- Chairman	11/13/36	G. P. Lyle & Co.	1000.	63½	825.00	635.00 190.00
11/13/36	" "	172	Darrow- Chairman	11/13/36	G. P. Lyle & Co.	500.	63½	412.50	317.50 95.00

Total 4,571.50

FEDERAL FACILITIES REALTY TRUST

SECURITY TRANSACTIONS BY
 COLONIAL SECURITIES COMPANY with FEDERAL FACILITIES REALTY TRUST or SUBSIDIARIES
 MAY 24, 1935 to DECEMBER 31, 1941

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cash	Difference between Cost and Selling Price
11/15/36	Columbus F.P. Bldg., Inc. 1st Wtgs. 6 1/2% Income Bonds	204	Darrou- Chairman	11/15/36	G.P. Lyle & Co.	\$ 500.	82-1/2	\$ 400.00	\$ 317.50	\$ 82.50 ✓
9/1/38	" "	125	Issuer—	9/1/38	Bertha Staiger	500. 100		500.00		
			Exchanged for #251 & 418 for \$500 each, purchased as follows: Above bond exchanged for #418 sold to Bertha Staiger 9/1/38. Purchased 8-18-38 from Mary Fennecy 500. 50 250.00 247.50 #251 sold 9/1/38; purchased 9/2/38 from G.P. Lyle & Co. 500. 50 250.00 230.00 22.50							
5/14/36	" "	404-405-406-408-410-411-496-497	Issuer	5/9/36	T. H. Valles	5000. 80		2500.00	2180.00	320.00
5/16/39	Irving Park P.O. Bldg. Corp., 1st Wtgs. 3% Income Bonds	55	Issuer	5/14/36	Louis Barthrop	500. 56		200.00	175.00	25.00
4/20/39	" "	55-57	Issuer	4/15/39	P.J. Tolan	1000. 35		400.00	380.00	20.00
5/10/39	" "	55	Darrou- Chairman	5/8/39	Lowell, Siebold & Co.	500. 56		205.00	180.00	25.00
5/25/39	Irving Park P.O. Bldg. Corp., 2nd Wtgs. 1% Income Bonds	55	Federal	5/25/39	Kneeland & Co.	500. 10		55.00	50.00	5.00
1/12/39	McKinley Park Station Bldg. Corp., 1st Wtgs. 3% Income Bonds	55	Issuer	1/19/39	Cornelia Little	1000. 51-1/2		515.00	515.00	10.00
1/19/39	" "	51	Federal	1/19/39	Cornelia Little	500. 51-1/2		162.50	157.50	5.00
2/24/39	" "	4-22	Federal	2/4/39	Kneeland & Co.	1000. 25-1/2		325.00	285.00	40.00
5/2/39	" "	80	Federal	5/1/39	Wm. H. Jones	1000. 35-1/2		350.00	315.00	35.00
5/3/39	" "	65	Issuer	5/3/39	Albert Phillips	1000. 32-1/2		350.00	325.00	25.00

FINANCIAL FACILITIES

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SECURITY TRANSACTIONS BY
CALDWELL & CHRISTIAN COMPANY with FINANCIAL FACILITIES TRUST & SUBSIDIARIES
MAY 24, 1935 to OCTOBER 21, 1941

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost	Difference Between Cost and Selling Price
6/11/39	McKinley Park Station Bldg. Corp., 1st Mtge. of Income Bonds	70	Federal	6/10/39	A.J. Hirst	\$1000.		122.00	100.00	22.00
6/27/39	Dallas parcel rest station, Inc., 1st Mtge. of Gen. Income Bonds	2236- 237	Issuer	6/27/39	Bond Trading Corp.	2000.	28 3/4	580.00	515.00	65.00
7/1/39	" " "	250	Issuer	7/1/39	Wichay, Boyle & Co.	500.	28 1/2	142.50	135.00	7.50
7/1/39	" " "	2507- 2508-2509 2510	Issuer	7/1/39	Enclosed	4000.	28	1080.00	1040.00	40.00
7/22/39	" " "	259	Issuer	7/22/39	Enclosed & Co.	500.	28	138.00	130.00	8.00
11/4/39	" " "	2120- 11	Issuer	10/12/39	Enclosed & Co.	1000.	28	280.00	280.00	0.00
12/22/39	" " "	260	Federal	6/11/39	Price, Anthony & Co.	500.	15	77.50	75.00	2.50
12/29/39	" " "	2124	Federal	2/22/39	Louis R. John & Assn.	500.	15	77.50	75.00	2.50
12/29/39	" " "	260	Federal	6/1/39	Boil & Company	500.	15	77.50	75.00	2.50
2/6/40	" " "	217, 251	Federal	2/6/39	Enclosed & Co.	1500.	15	232.50	225.00	7.50
6/27/39	" " "	2412- 259	Issuer	6/22/39	Enclosed & Co.	2000.	15	300.00	300.00	0.00
4/4/40	" " "	270	Issuer	6/27/39	H. J. Phillips & Co.	500.	15	115.00	85.00	30.00

Total \$208.19

FEDERAL FACILITIES REALTY TRUST

SECURITY TRANSACTIONS BY
 COLONIAL SECURITIES COMPANY with FEDERAL FACILITIES REALTY TRUST or SUBSEQUENTS
 MAY 21, 1935 to DECEMBER 31, 1935

Sales Date	Security	Bond No. Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Difference between Cost and Selling Price	
								Cost	Price
6/2/37	Ferry Station Bldg- Issuer F.O., Inc., 627 1st Flg. 35 Gen. Income Bonds		4/21/37	A. G. Becker & Co.	32000.	19-1/2	603.00	390.00	210.00
8/4/37	" "	K399 Issuer	4/19/37	Robcock, Nathan	1000.		265.00	195.00	70.00
8/4/37	" "	K630 Issuer	4/21/37	A. G. Becker & Co.	1000.		265.00	195.00	70.00
* Above \$2000 bonds were actually delivered to Issuer. Issuer, however, substituted Nos. D170-176-188; C155- 153-154-157 which Issuer received in exchange from Federal Facilities Realty Trust for said bonds for K399 and K630.									
10/22/37	" "	C35 Issuer	10/23/37	Hartley Rogers & Co.	100.	25-1/2	26.50	25.50	1.00
3/2/38	" "	K153 Issuer	3/2/38	Harbert E. Gross & Co.	1000.	26	265.00	260.00	5.00
10/17/38	" "	C86 Issuer	10/13/38	Lilley & Co.	100.	25	26.75	25.00	1.75
1/5/39	" "	K178 Issuer	1/5/39	Lilley & Co.	1000	26-1/2	267.50	265.00	2.50
5/17/39	" "	D120 Issuer	5/17/39	Forris & Hardgrove	500	26	132.50	130.00	2.50
11/10/39	" "	K686 Issuer	11/10/39	Harbert E. Gross & Co.	1000.		272.50	268.00	4.50
9/2/36	Jimmy Station Bldg F.O. Bldg. Corp., 1st Flg. 35 Gen. Income Bonds		8/28/36	S.T. and Emma Schmidt	500.45		287.50	288.00	32.50
10/17/35	" "	K176 Issuer	8/14/35	Knoland & Co.	1000.	33	377.50	330.00	47.50
9/27/37	" "	K207-217 Issuer	9/27/37	Bayle, O'Connor & Co.	2000.	43-1/2	875.00	870.00	5.00

2.1 7452 16

QUALITY INVESTMENTS BY
 NATIONAL SECURITIES CO. NY with FEDERAL FACILITIES TRUST OF NEW YORK
 MAY 24, 1936 to JUNE 31, 1941

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost	Difference Between Cost and Selling Price
9/30/37	Quincy Station #899 Insurer F.O. Bldg. Corp., 1st Wagon St. Conn. Income Bonds			9/29/37	Doyle, O'Connor & Co.	1000.	43 1/2	437.50	435.00	2.50
9/17/39	"	#754 Insurer		9/17/39	Parrie & Fardgrove	1000.	43	432.50	430.00	2.50
9/18/39	"	#129 Insurer		9/18/39	Lillian Curtis	800.	43	344.25	345.00	1.25
9/18/39	"	#41 Insurer		9/18/39	Alice Blackburn	800.	43	344.25	345.00	1.25
9/18/39	"	#142 Insurer		9/18/39	Wanda L. Brown	800.	43	344.25	345.00	1.25
11/17/38	Quincy Station #171 Insurer F.O. Bldg. Corp., 2nd Wagon St. Income Bonds			11/16/38	Est-ate of James Lynch	1000.	30	300.00	300.00	0.00
1/18/37	South Side F.O. #204 Insurer Serv. Bldg. Corp., 206-207- 1st Wagon St. 206-109- Income Bonds			1/18/37	Joseph Bumelster	8000.	35	2800.00	1780.00	1020.00
1/11/39	"	#167- Insurer 168-171		1/11/39	A.J. Fick	1800.	40	720.00	800.00	7.50
2/1/39	"	#36 Federal		1/25/39	J. Holmes	800.	35	280.00	175.00	105.00
2/1/39	"	#23 Federal		1/25/39	W. J. Roscoe	800.	35	280.00	175.00	105.00
2/1/39	"	#158; Federal 641-77- 78-88- 87		1/21/39	R. H. Meredith	1000.	35	350.00	350.00	0.00

1 total 432.75

FEDERAL FACILITIES REALTY TRUST

SECURITY TRANSACTIONS BY
 COLONIAL SAVINGS COMPANY with FEDERAL FACILITIES REALTY TRUST or SUBSIDIARIES
 MAY 24, 1955 to NOVEMBER 31, 1961

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost	Difference between Cost and Selling Price
1/4/52/60	South Side P.O. Serv. Bldg. Corp., 112 1st Hq. 25 Income Bonds	Calif-112	Issuer	4/22/60	Kneeland & Co.	\$ 200.	25	\$ 50.00	\$ 72.00	\$ 18.00
1/3/52/55	Twenty-Second St. Station Bldg. Corp., 1st Hq. 25 Income Bonds	20	Issuer	3/10/55	Hegere & Tracy	100.	25	25.00	25.00	0.00
1/4/4/60	" "	75-76-81	Issuer	6/22/55	Fuller, Crutenden & Co.	200.	25-1/2	106.00	87.50	27.50
1/4/22/55	United States Bldg. Corp., 1st Hq. 25 Income Bonds	445	Issuer	10/25/55	Hutton, Caswell & Co.	1000.	22	200.00	220.00	20.00
1/4/22/55	" "	445	Issuer	10/25/55	Hegere & Tracy	1000.	22	200.00	220.00	20.00
6/15/55	" "	257	Issuer	6/15/55	Otto C. Berg	500.	25	125.00	125.00	0.00

**PURCHASE AND SALES BY
COLONIAL TRUST COMPANY
FEDERAL FACILITIES REALTY TRUST GROUP**

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COLONIAL SECURITIES COMPANY							Difference between	
<u>FEDERAL FACILITIES REALTY TRUST GROUP</u>							Cost and	
<u>Bond No.</u>	<u>Purchase Date</u>	<u>Purchased From</u>	<u>Sales Date</u>	<u>Sold To</u>	<u>Par Value</u>	<u>Cost</u>	<u>Selling Price</u>	<u>Selling Price</u>
<u>FEDERAL FACILITIES REALTY TRUST BONDS:</u>								
161	8/71/36	Thompson, Davis & Philore		Bold	\$ 800.	85.00		
77-78-79-80-81-82-83	8/17/37	R. E. Bartlett		Bold	1000.	70.00		
1001	2/11/38	E.L. Mc Kay, Admin. Estate H. Quebec		Bold	1000.	10.00		

FEDERAL FACILITIES REALTY TRUST BONDS:

107-108-109	12/18/38	H. Levy	11/18/38	H. Altman	8000.	700.00	800.00	0.00
28	8/14/37	H. E. Gander		Bold	1000.	188.00		
108	8/11/40	A. J. Farvey	8/11/40	H. Johnson	1000.	8.00	8.00	0.00

CHICAGO POSTOFFICE STREETCAR BLDG. CORP., 1ST MORTGAGE 5% INCOME BONDS:

1040	8/12/38	A. Hieber	8/30/38	H. Cahill	1000.	\$ 0.00	800.00	0.00
1075-778	8/14/38	G. L. Christman Co.	8/30/38	H. Cahill	8000.	\$808.00	1000.00	128.00
1008	7/3/38	G.L. Christman Co.	7/3/38	F. Almeroth	1000.	380.00	400.00	80.00
1013	8/27/38	Blyth & Co.	7/3/38	F. Almeroth	1000.	388.00	400.00	82.00
1015	8/27/38	Hickey Doyle Co.	7/3/38	F. Almeroth	1000.	380.00	400.00	80.00
	7/31/38	H. Johnson	7/31/38	F. Almeroth	2000.	1800.00	1800.00	0.00
1016	10/10/38	Stein Brosman Co.	11/3/38	Superior Inv. Co.	800.	197.80	197.80	0.00
1018	10/10/38	Stein Brosman Co.	10/18/38	B. Harris	800.	197.80	200.00	2.20
1019	10/10/38	Stein Brosman Co.	10/18/38	B. Harris	800.	197.80	200.00	2.20
1020	12/22/38	G.L. Christman Co.	2/13/39	A. Hjertholm	1000.	388.00	400.00	82.00
1014	12/22/38	Nicholson & Co.	12/22/38	H. Levy	1000.	200.00	200.00	0.00
1008	12/14/38	Nicholson & Co.	12/14/38	H. Levy	1000.	205.00	205.00	0.00
1007/8	8/30/37	Fuller Crutchen	8/8/37	H. Levy	2000.	400.00	420.00	20.00
1018	8/28/37	H.M. Sullivan Sons	8/18/37	G. Powell	1000.	200.00	200.00	0.00
1017	8/14/37	G. Higgins	8/9/37	A. Powell	1000.	200.00	200.00	0.00

Total 1000.00

**PURCHASE AND SALES BY
C. L. WILSON & COMPANY
REAL ESTATE INVESTMENT TRUST COMPANY**

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<u>Bond No.</u>	<u>Purchase Date</u>	<u>Purchased From</u>	<u>Sales Date</u>	<u>Sold To</u>	<u>Par Value</u>	<u>Cost</u>	<u>Selling Price</u>	<u>Difference between Cost and Selling Price</u>
COLUMBIA TRUST COMPANY - 1ST MORTGAGE 6% 1930S BOND:								
W-71/2	6/10/35	L.B. Rifford	6/1 / 35	E. Arnes	\$1000.	\$400.00	\$550.00	\$ 150.00
D252	6/11/35	H.J. Hall	6/11/35	E. Arnes	500.	270.00	275.00	5.00
D-81 C876	12/1/35	Geo. Bonn	12/8/35	J. Ford	500.	220.00	250.00	130.00
D466	1/17/36	T. Beck	1/27/36	A. Gagen	500.	300.00	340.00	140.00
D412	2/10/36	Knobland & Co.	2/10/36	Mrs. J. Tjaden	500.	220.00	250.00	130.00
D400	6/6/36	G. Peterson	5/1/36	Mrs. P. Tjaden	1000.	570.00	700.00	130.00
D107	11/13/36	C. McBride Co.	11/24/36	A. Becker	500.	275.00	295.75	120.75
D126	4/25/36	H. Cahill	6/30/36	H. Becker	500.	275.00	290.00	115.00
D180 197-231	10/11/36	A. C. Wynn Co.	11/12/36	H. Levy	1500.	885.00	1200.00	315.00
D189-285	4/14/36	G. Johnson	4/16/36	H. Levy	1000.	580.00	700.00	120.00
D461 480	10/14/36	Witten Caswell Co.	10/16/36	A. Nielsen	500.	245.00	271.00	126.00
424-425	9/8/36	C. Steen	10/16/36	A. Nielsen	500.	240.00	275.00	135.00
	10/16/36	G. P. Lyle & Co.	10/16/36	A. Nielsen	2000.	1005.00	1250.00	245.00
169	1/27/36	Annie Becker	1/27/36	A. Gagen	500.	325.00	340.00	115.00
163	11/18/36	G.P. Lyle Co.	11/24/36	A. Becker	500.	217.50	295.75	78.25
D173-184 291-302	2/9/37	G.P. Lyle Co.	2/11/37	M.T. Julius	2000.	1075.00	1000.00	75.00
DALLAS TRUST COMPANY - 1ST MORTGAGE 5% 1930S BOND:								
D120	12/5/35	Bond Trading Co.	12/22/35	A.E. Melain	1000.	351.50	325.00	26.50
D122	12/5/35	Bond Trading Co.	12/22/35	A. S. Alschuler	1000.	351.50	300.00	51.50
D121	12/5/35	Bond Trading Co.	12/22/35	S. Freedman	1000.	351.50	300.00	51.50
D134/5	12/20/35	Knobland & Co.	12/22/35	A. S. Alschuler	2000.	640.00	600.00	40.00
	1/6/36	Beutcher & Co.	1/6/36	C. Jullinson	1500.	393.75	385.00	8.75
D75/6	1/6/36	Bond Trading Co.	1/6/36	C. Jullinson	1000.	355.00	350.00	5.00
D99	1/24/36	Stieffel Pickelous	1/24/36	C. Jullinson	500.	170.00	175.00	5.00
D285	12/11/35	Knobland & Co.	12/11/35	C. Higgins	1000.	355.00	300.00	55.00
D132/4	12/5/35	Bond Trading Co.	12/11/35	C. Higgins	2000.	625.00	600.00	25.00
D241-250	2/15/36	Knobland & Co.	2/11/36	H. Levy	2000.	700.00	600.00	100.00

Total 2175.75

RECEIVED AND PAID BY
 COLONIAL TRADING COMPANY
 FOR THE PURCHASE OF THE FOLLOWING:

Bond No.	Purchase Date	Purchased From	Sale Date	Sold To	Par Value	Cost	Selling Price	Difference between Cost and Selling Price
<u>UNITED STATES GOVERNMENT, 1ST MORTGAGE ON U.S. DEBT:</u>								
4555	4/23/40	J. J. Ferry	6/25/40	H. Johnson	1000.	180.00	180.00	0.00
	11/7/38	Knoblock & Co.	12/31/38	A. Hicken		281.80	281.00	0.80
455	4/23/40	J. J. Ferry, Inc.	6/25/40	H. Johnson	1000.	75.00	60.00	15.00
	1/24/38	Knoblock, Nichols	2/22/38	A. Hicken		170.00	175.00	5.00

FIRST NATIONAL TRUST OFFICE, INC., 1ST MORTGAGE ON U.S. DEBT:

	12/17/38	Knoblock & Co.	12/17/38	S. Levy	1000.	2280.00	2280.00	0.00
459	1/8/38	Hartley Rogers Co.	12/3/38	S. Levy	1000.	20.00	20.00	0.00
4549	12/2/38	Knoblock & Co.	12/2/38	S. Levy	1000.	217.80	217.80	0.00
4574/144- 280-752- 0127-149	2/4/37	Hartley Rogers Co.	2/4/37	S. Levy	14000.	2870.00	2870.00	0.00
4573/4- 010/2- 0/0/38	1/8/37	Knoblock & Co.	1/20/37	S. Levy	14000.	2800.00	2800.00	0.00
4584	7/17/38	Contributors Group	7/18/38	H. Walsh	1000.	280.00	270.00	10.00
4621/3	7/15/38	Mathews, Ohio Co.	7/18/38	H. Walsh	1000.	280.00	280.00	0.00

INVESTING FUND FOR THE BUILDING CORPORATION, 1ST MORTGAGE ON U.S. DEBT:

95	7/9/38	F.C. Benson	7/22/38	G. Jellison	1000.	125.00	125.00	0.00
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Total \$377.2

RECEIPTS AND SALES BY
THE NATIONAL TRADING COMPANY
NATIONAL TRADING COMPANY

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Bond No.	Purchase Date	Purchased From	Sales Date	Sold To	Par Value	Cost	Selling Price	Selling Price
UNITED STATES POST OFFICE BLDG. COMP. - 1st DISTRICT, NEW YORK								
2245	2/1/36	Stain Bros. Co.	2/3/36	A. Wickham	\$1000.	\$ 557.50	\$ 625.00	\$ 67.50
788-241	2/22/36	Hickey Doyle Co.	2/24/36	C. Zischler	2000.	670.00	880.00	210.00
408	2/7/36	G.L.Ostrum Co.	2/7/36	J. Lige	1000.	362.50	362.50	0.00
87	2/22/36	Knoland & Co.	2/24/36	G.F.Lige & Co.	1000.	340.00	380.00	40.00
143/4	2/12/36	Reed Trading Corp.	2/12/36	H. Levy	2000.	840.00	850.00	10.00
112/3-400	7/24/36	Farrell Bros.	8/4/36	H. Levy	2000.	814.00	975.00	161.00
2421	2/3/36	Stain Bros. Co.	2/3/36	H. Levy	1000.	313.00	325.00	10.00
2119	2/3/36	Stain Bros. Co.	2/12/36	H. Levy	1000.	312.50	325.00	12.50
2672/3	1/2/36	Knoland & Co.	1/9/36	H. Walp	2000.	710.00	730.00	20.00
2425	12/2/36	Hickey Doyle Co.	2/24/36	H. Walsh	1000.	312.50	315.00	2.50
2090	4/2/36	Rogers & Tracy	4/7/36	Hickey Doyle Co.	1000.	430.00	450.00	20.00
2220	4/12/36	Hickey Doyle Co.	10/2/36	Mrs. L. Glute	1000.	427.50	455.00	27.50
2220	4/12/36	Knoland & Co.	6/23/36	Mrs. L. Glute	1000.	427.50	455.00	27.50
222-22	12/2/36	Hickey Doyle Co.	12/10/36	H. Zarthung	2000.	1025.00	1250.00	225.00
222	7/12/36	F. Bickell	7/12/36	Farrell Bros.	500.	154.00	161.00	7.00
2141	2/12/36	Hickey Doyle Co.	2/12/36	William Hickey	500.	177.50	212.50	35.00
2141	2/12/36	William Hickey	2/12/36	Fry Townsend	500.	212.50	236.75	24.25
2120	2/12/36	Hickey Doyle Co.	2/24/36	Fry Townsend	1000.	427.50	477.50	50.00
2270	7/1/36	Hickey Doyle Co.	6/23/36	H. Townsend	1000.	427.50	477.50	50.00
2210	2/12/36	H. Coble	7/21/36	H. Townsend	1000.	400.00	472.50	72.50
	2/12/36	Knoland & Co.	2/12/36	E. C. Coble		367.50	425.00	57.50
2719	2/12/36	Knoland & Co.	2/12/36	C. Williams	1000.	355.00	425.00	70.00
241	2/12/36	Knoland & Co.	2/22/36	R. Gilbert	500.	170.00	170.00	0.00
2120	2/12/36	Hickey Doyle Co.	2/24/36	L. Curtis	500.	213.75	232.50	18.75
240	2/12/36	Hickey Doyle Co.	2/24/36	A. Blackburn	500.	213.75	232.50	18.75
240	2/12/36	H. Levy	2/24/36	H. Townsend	500.	213.75	236.75	23.00
*Exchanged with F. C. Furrow together with 2719 for 2413.								
	2/3/36	Stain Bros. Co.	2/12/36	H. Levy		165.75	162.50	3.25
2142	1/2/36	Knoland & Co.	1/2/36	Walter Walp	500.	177.50	190.00	12.50
2142	2/12/36	Max Levy & Co. 1/2	2/24/36	Mrs. Frank E. Brown	500.	232.50	237.50	5.00
2271	7/1/36	Knoland & Co.	7/12/36	Farrell Bros.	1000.	330.00	355.75	25.75
UNITED STATES BUILDING COMP. - 2nd DISTRICT, NEW YORK								
242-247-248-249-251	2/12/36	H. Johnson	2/24/36	H. J. Farrey	2000.	575.00	605.00	30.00

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PU CHASE AND SALE BY
 CHAS. E. BROWN COMPANY
 FACILITIES READY TO GO

<u>FACILITIES REALTY TRUST GROUP</u>								Difference between Cost and Selling
<u>Bond No.</u>	<u>Purchase Date</u>	<u>Purchased From</u>	<u>Sales Date</u>	<u>Sold To</u>	<u>Par Value</u>	<u>Cost</u>	<u>Selling Price</u>	<u>Selling Price</u>
<u>UNITED STATES BUILDING CORPORATION, 1st MORTGAGE, 5% INCOME BONDS:</u>								
10217-131	7/15/37	G. W. Christman Co.	9/11/37	Rose Tavin	\$1000.	\$ 210.00	\$ 210.00	\$ 0.00
10218-325- 454	9/10/37	J. V. Torpie	9/11/37	Rose Tavin	8000.	600.00	600.00	0.00
10219- 488	5/15/38	H. S. Ruppert Co.	5/15/38	A. Hicken	1000.	580.00	800.00	180.00
10220- 102-308- 489	5/15/38	H. S. Ruppert Co.	5/15/38	A. Hicken	5000.	1080.00	1600.00	480.00

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FEDERAL FACILITIES REALTY TRUST
SECURITY TRANSACTIONS BY HERBIE JOHNSON
MAY 21, 1938 to DECEMBER 31, 1941

Sale Date	Description	Unit No.	Sold To	Purchase Date	Purchased From	Per Share Value	Share Price	Sales Amount	Cost	Difference Between Cost and Selling Price
1/11/40	Colonial Federal Post Bldg., 1st, 1st Ave., Apt. Room 204	184	Lawer	1/1/40	Colonial Securities Company	\$ 800.	82	\$ 65,600	\$ 280.00	\$ 258.00
1/11/40	"	214	Exchanged			1000	82-1/2	82,000	2700.00	1400.00
1/11/40	"	215	for \$4000.00			8000.	82-1/2	82,000		
1/11/40	"	216	last security							
1/11/40	"	217	acquired @ 80.							
1/11/40	"	218-219								
1/11/40	"	219-220								
1/11/40	"	220								
1/11/40	"	185	Exchanged with General Lee for \$200.00 and 2000 shares 7/1/40 originally acquired from C. Parker for \$100.00 in 1947 security purchased @ 80.			100.	100	100.00	100.00	100.00
	"	424	C. Williams @ 80	9/11/40	Colonial Securities Company			100.00	100.00	100.00
	"	425	Exchanged (4/11/40) with John Ward for \$200 which was given to L. Price.							
	"	444	Exchanged (4/11/40) with Louis Gagne for \$100.							
	"	574	John Ward 7/11/40- 7/12/40 @ 80.					100.00	100.00	100.00
1/11/40	"	186	Exchanged as above. (See 204.)			100.	82-1/2	82.00	100.00	100.00
1/11/40	"	176	Purchased from Grace Marshall 1/11/40 @ 80.			1000.	80	80,000		
1/11/40	"	182	Purchased by George Williams 1225 @ 100					100.00	100.00	100.00

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FACILITIES REALTY TRUST

SECURITY TRANSACTIONS BY SYDNEY JOHNSON
MAY 24, 1935 to DECEMBER 31, 1941

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales & Purchase Price	Sales Amount	Difference Between Cost and Selling Price
	Federal Facilities Realty Trust, Shares of Beneficial Interest	Cart. No.	Held	6/11/40	Colonial Securities Company	\$1000.	54	\$ 500.00	
7/31/35	Chicago P.O. Service Bldg. Corp., 1st Mtge. 5% Cum. Income Bonds	No. Record	Purchased from Kneeland & Co. 7/23/35 and 7/29/35	7/31/35	Colonial Securities Company	3000.	40	\$1200.00	1090.01 \$ 109.99
3/4/37	Columbus Parcel Post Bldg., Inc., 1st Mtge. 6% Income Bonds	88	Exchanged with W. Landau together with #97 for #573 acquired at 36 1/2.				See below.		
	"	573	Exchanged for 97 and 98 as per above.	6/11/40	Colonial Securities Company	1000.	36-1/2	1000.00	363.00 636.00
11/28/39	"	172	Issuer	11/1/39	D. Evans	500.	95	475.00	290.00 225.00
(see p 39 9-10 re p.c.)									
1/8/40	"	(143 & 144	Exchanged for 439 & 480 with Edward Swoboda		Colonial Securities Company	500. 500.	100 100	500.00 500.00	
1/14/40	"	(439 & 480	Exchanged with John Ward for #143 & 144.	6/11/40	Colonial Securities Company	500. 500.	36-1/2 36-1/2	1000.00	182.80 217.80
1/14/40	"	180	Exchanged for #251 with L. Brice. Bond #251 originally exchanged with John Ward for #481.			500.	100		
	"	481	Exchanged with John Ward for #251 which was given to L. Brice	6/11/40	Colonial Securities Company	500.	36-1/2	500.00	182.80 217.80
1/19/40	"	256	Issuer	1/19/40	Colonial Secur. Co.	500.	54	480.00	290.00 180.00
	"	257-259	H. Levy	1/24/40	"	1000.	54	580.00	580.00 0.00

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Valerie Alaridge Trust
SECURITY TRANSACTIONS BY MYRTLE JOHNSON
MAY 24, 1935 to DECEMBER 31, 1941

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cash	Difference between Cost and Selling Price
5/27/40	Dallas Parcel Post Station, Inc., 1st Mtg. 5% Cum. Inc. Bonds	2555	Issuer	5/25/40	Colonial Securities Co.	\$1000.	14	\$ 210.00	\$ 180.00	\$ 30.00
10/7/40	"	294	Issuer	5/25/40	"	500.	14	106.00	80.00	26.00
5/14/40	Ferry Station P.O., Inc., 2nd Mtg. 1% Income Bonds	197-198	Colonial Securities Co.	5/14/40	Cash	1000.	5	50.00	50.00	0.00
4/10/40	Quincy Station Bldg. Corp., 2nd Mtg. 5% Income Bonds	1161-162-163-174-191	Issuer	7/27/36	Colonial Securities Co.	500.	22-1/2	112.80		
4/10/40	"	161-162-163-174-191	Issuer	7/10/40	A.T. Powell	\$000.	30	1500.00	1500.00	0.00
4/27/40	United States Bldg. Corp., 1st Mtg. 5% Income Bonds	344-345-392-398-458	Issuer	5/25/40	Colonial Securities Co.	\$000.	13-1/2	750.00	405.00	\$345.00
5/2/40	"	242-247-248-275-293-291	Issuer	5/25/40	"	\$000.	13-1/2	750.00	405.00	\$345.00
11/4/36	"	115	Federal	11/4/36	Kartim Tauber & Co.	100.	25	25.00	25.00	0.00

* This bond given to Valerie Alaridge as a birthday gift and sold by her on 9/10/37 at 55.

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FEDERAL FACILITIES REALTY TRUST
MAX LEVY & SALLY LEVY

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Sales Date	Security	Bond No.	Sold To	Purchase Date	Par. From	Par Value	Sales Amount	Cost	Profit or Loss
6/14/37	C. P. O.	M814	Col.	12/23/36	Colonial	1,000.	300.	200.	100.
"	1st 5% Bond	M108	"	12/14/36	"	1,000.	300.	205.	95.
"	"	M287/8	"	5/6/37	"	2,000.	600.	420.	180.
3/18/38	C. P. O.	D104	Issuer	10/30/32	J. K. & Co.	500.			
"	2nd Bonds	C19-20	Not sold	3/31/39	Colonial	200.		20.	0
12/28/38	Columbus P.P. 6 1/2 Bonds	189 } 265 } 113-114 117	Issuer	4/18/38	Colonial	1,000.	850.	700.	150.
4/18/38	"	124	"	3/22/38	M. Johnson	500.	1500.	1300.	200.
12/24/38	"	180-197-231	"	10/13/38	"	500.	490.	475.	15.
					Colonial	1,500.	1275.	1200.	75.
Not Sold	Dallas Parcel Post 1st Mgs.	M241 369	Holds	3/21/38	"	2,000.		400.	0
Not Sold	Dallas Parcel Post 2nd Mgs.	M53	"	3/31/39	"	1,000.		200.	0
8/4/37	Ferry Station Misc. Prop. Post Office, Sold to 1st Mgs.		Issuer	12/2/36 2/4/37	"	45,100.	13,530.	9,147.50	4,342.50

Total 5257.50

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FEDERAL FACILITIES REALTY TRUST

HAN & SALLY LEAVY

447

Sales Date	Security	Bond Nos.	Sold to	Purchase Date	Purchase from	Par Value	Sales Amount	Cost	Profit or Loss
9/24/1936	Quincy Station First Apts. Bonds	M443) 717) 737) 472) 473) (D 142) (L 98)	Issuer " " " " " "	5/12/36 " " " " "	H. J. Hulp \$5,800.) in exchange for 2M Parkview Homes 1st aptg. bonds which cost \$2,000.		\$3,015.	2,000.	
* Note below						\$300.		162.50	
							\$3,015.	2,162.50	\$852.50
*Note M442 and D98 were exchange for M 415 with Mr. Larion therefore M415 was sold to issue in lieu of D98 and M42 D. 98 was purchase from Colonial Sec. Co. 8/15/36 for \$162.50 as noted above.									
10/24/1936	Quincy 1st	M443-4	Issuer	8/15/36	Colonial	2,000.	\$1010.	840.	800.
		412-119 112-112-405		3/5/35	"	2,000.	2325.	1625.	800.

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EXHIBIT III-B

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FEDERAL FACILITIES REALTY TRUST

SECURITY TRANSACTIONS BY SURVIVOR PERSONS
MAY 24, 1955 to OCTOBER 31, 1961

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales & Purchase Price	Sales Amount	Cost	Difference between Cost and Selling Price
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By Gilbert Johnson (Brother of Myrtle Johnson) and Frances Johnson, his Wife:

	Columbus Par-177 (Sed Myrtle 11/1/55 Colonial eal PostBldg., Inc., 1st Hqg. Bonds	177	Johnson schedule; (Note: Sold to Issuery Myrtle Johnson, 11/28/59 at \$5 for \$475.00)	11/1/55	Colonial	\$ 500.00	\$5	\$275.00		
4/14/58	"	188	Colonial	4/12/48	S.E. Chr- strom & Co.	1000.	69	690.00	800.00	110.00
9/22/58	South Side P.O. 105- Service Sta. Bldg 107 1st Hqg. 95 Income Bonds	105	Issued 4/12/58	9/21/58	OP L. Chr- strom & Co.	100	60	160.00	75.00	85.00
4/24/58	Twenty-Second 13 St. Sta. Bldg. Corp., Secur. Co. 1st Hqg. 57 Income Bonds	13	Colonial	4/14/58	Oak Park Trust & Savings Bank	100	26 1/2	26.50	28.00	1.50
Total \$236.50										

499

Total by Pages of Difference between Cost and Selling Price
of Securities Transactions Contained in S.E.C. Exhibit 5 .449

Federal Facilities Realty Trust

p.1	\$ 878.50
p.2	695.00
p.3	304.19
p.4	452.16
p.5	328.75
p.6	245.50
p.7	570.00
p.8	2,778.75
p.9	397.50
p.10	1,285.63
p.11	600.00
p.12	2,722.50
p.13	2,072.48
p.14	765.00
p.15	5,257.50
p.16	2,112.50
p.17	<u>236.50</u>

Total \$ 21,702.46

500

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1450

NATIONAL REALTY TRUST
SECURITY TRANSACTIONS BY
COLONIAL SECURITIES COMPANY with NATIONAL REALTY TRUST or SUBSIDIARIES
MAY 24, 1934 to DECEMBER 31, 1941

Sales Date	Security	D. No.	Issuer	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost	Difference Between Cost and Selling Price
5/7/40	Armour Station Bldg. Corp., 1st Hq. 25 Income Bonds	L-22	Issuer	5/6/40	Anderson, Plots & Co.	\$ 800. 20		\$ 100.00	\$ 75.00	\$ 25.00
5/14/39	Armour Station Bldg. Corp., 1st Hq. 25 Income Bonds	H407, D227- 248	Issuer	5/9/39	T. R. Val- lee	2000. 40		800.00	780.00	20.00
12/1/39	" "	H328	Issuer	11/22/39	Hickey & Company	1000. 40		400.00	380.00	20.00
2/13/40	" "	D-25	National	1/13/40	Fred Short	800. 40-1/2		202.50	200.00	2.50
5/10/40	" "	D280	Issuer	5/10/40	Caswell & Company	800. 40		200.00	190.00	10.00
5/22/40	Armour Station Bldg. Corp., 2nd Hq. 25 Income Bonds	H-5	Issuer	5/22/40	Fuller, Crittenden & Co.	1000. 21		210.00	195.00	15.00
5/1/40	" "	H-14	Issuer	4/30/40	Caswell & Co.	1000. 20		200.00	180.00	20.00
5/27/37	Barwyn P.O. Bldg. Corp. 1st Hq. 25 Income Bonds	H12- 20	Issuer	5/12/37	Harris & Company	2000. 25		700.00	400.00	300.00

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NATIONAL REALTY TRUST

SECURITY TRANSACTIONS BY
COLONIAL SECURITIES COMPANY WITH NATIONAL REALTY TRUST OR SUBSIDIARIES
MAY 24, 1935 to DECEMBER 31, 1941

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost	Difference Cost and Selling Price
5/15/36	Division & LaVergne Bldg. Corp., 1st Mtge. 5% Income Bonds	M162	Issuer	5/14/36	Marie B. Rink	\$1000.	45	\$450.00	\$400.00	\$50.00
5/15/36	" "	M165	Issuer	5/14/36	Emma S. Helberg	1000.	45	450.00	400.00	50.00
2/6/36	" "	D51	Issuer	1/21/36	R. H. Meredith	500	35	175.00	125.00	50.00
5/12/36	" "	M163	Issuer	5/12/36	Albert Wharton	1000	40	400.00	300.00	100.00
5/12/36	" "	D71-72	Issuer	5/11/36	Ernest C. Tyley	1000.	40	400.00	350.00	50.00
6/12/36	" "	M176	Issuer	6/14/36	Bond & Goodwin	1000	40	400.00	350.00	50.00
2/17/37	Grand Rapids P.P. Bldg. Corp 1st Mtge. 4% Cum. Income Bonds	M3	Issuer	2/17/37	DeYoung Larson & Tornga	2000	50	1000.00	960.00	40.00
12/5/38	" "	M52-53-34 35	Issuer	12/5/38	I.M. Simon Co.	4000.	52 1/2	2090.00	2080.00	10.00
4/8/39	Grand Rapids P.P. Bldg Corp 2nd Mtge. 3% Income Bonds	D18-19-20	National	4/7/39	Tennaro Iavarone	1500.	20 1/2	307.50	300.00	7.50

Total \$407.50

502

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NATIONAL REALTY TRUST

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SECURITY TRANSACTIONS BY COLONIAL SECURITIES COMPANY with NATIONAL REALTY TRUST or SUBSIDIARIES MAY 24, 1935 to DECEMBER 31, 1941

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Difference Between Cost and Selling Price
4/30/40	Los Angeles Service Station, Inc., 1st Mtge. 5% Income Bonds	B178	Issuer	4/11/40	Kneeland & Co.	\$ 500.	15	\$ 75.00	\$ 85.00 \$ 20.00
9/28/34	Opden Park P.O.Bldg. Corp., 1st Mtge. 5% Income Bonds	M388	Darrow- Chairman	9/12/34	H.J. Brod- erick	1000.	17-1/2	175.00	90.00 85.00
9/28/34	" "	M38	Darrow- Chairman	9/21/32	Hickey, Doyle & Co.	1000.	17-1/2	175.00	125.00 80.00
12/31/37	Pestal Facil- ities, Inc., 1st Mtge. 5% Cum. Income Bonds	M188	Issuer	8/20/37	Fuller, Crittenden & Co.	1000.	20	200.00	240.00 80.00
5/31/38	" "	M405	Issuer	5/28/38	Amelia Schweitzer	1000.	80	800.00	835.00 85.00
5/31/38	" "	M197- 363-370	Issuer	11/17/37	Franc. B. Cahn & Co.	2000.	80	1600.00	1580.00 40.00
5/31/38	" "	M364	Issuer	3/29/38	Virginia Van Borne	1000.	80	800.00	880.00 80.00
4/31/38	" "	M203	Issuer	1/4/38	F.F. Fox & Co.	1000.	80	800.00	800.00 100.00
4/3/38	" "	M47	Issuer	3/29/38	Elmer C. Cowell	1000.	80	800.00	800.00 100.00
4/30/38	" "	M205	Issuer	6/9/37	Regers & Tracy	1000.	80	800.00	410.00 190.00
4/30/38	" "	M422	Issuer	4/30/38	Marie Walsh	1000.	80	800.00	880.00 80.00
6/22/38	" "	D42	Issuer	6/20/38	Carrie Vickrey	500.	88	440.00	482.50 27.50
6/22/38	" "	M44	Issuer	6/15/38	Katherine L. Gunn	1000.	88	880.00	880.00 80.00
6/22/38	" "	M126	Issuer	6/20/38	May McCon- nall	1000.	88	880.00	825.00 85.00

NATIONAL REALTY TRUST
SECURITY TRANSACTIONS BY

COLONIAL SECURITIES COMPANY WITH NATIONAL REALTY TRUST OR SUBSIDIARIES
MAY 24, 1926 to DECEMBER 31, 1941

Sales Date	Security	Bond No.	Sold to	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost	Difference Between Cost and Selling Price
6/12/38	Postal Facil-M276 ties, Inc., 1st Mtge. 3 1/2% Cum. Income Bonds		Issuer	4/22/38	Carlyle Mutschler	\$1000.	58	\$ 580.00	\$ 500.00	\$ 80.00
8/1/38	"	" M449	Issuer	4/12/38	Carlyle Mutschler	1000.	60	600.00	500.00	100.00
8/1/38	"	" D98	Issuer	5/3/38	Genevieve Cook	500	60	300.00	250.00	50.00
8/1/38	"	" D94	Issuer	6/24/38	Eva Bur- meister	500.	60	300.00	262.50	37.50
8/1/38	"	" M313	Issuer	5/3/38	Hettye J. 1000. Cady	1000.	60	600.00	515.00	85.00
8/1/38	"	" M37	Issuer	4/27/38	Beatrice Cannon	1000.	60	600.00	520.00	80.00
8/1/38	"	" M16- 16	Issuer	8/10/38	Stein Bros- han & Co.	500	60	1200.00	1185.00	15.00
8/9/38	"	" D108- 108	Issuer	8/9/38	Forrest E. 1000 Smith	1000	58 1/2	592.50	590.00	2.50
11/22/38	"	" M51	Issuer	11/22/38	Lilley & Company	1000.	55	550.00	510.00	40.00
12/15/38	"	" D58- 58	Issuer	12/15/38	J. L. Chr- strom & Co.	1000	55	550.00	527.50	22.50
12/15/38	"	" D101- 102-103- 104	Issuer	12/12/38	Stein, Brennan & Co.	2000.	55	1100.00	1045.00	55.00
4/4/39	"	" D47- 93	Issuer	5/10/37	J. F. Bailley & Co.	1000.	60	600.00	430.00	170.00
2/15/39	"	" D98	Issuer	5/10/37	J. F. Bailley & Co.	500.	55	275.00	215.00	60.00
2/15/39	"	" M385	Issuer	2/10/38	William G. McConnell	1000	55	550.00	530.00	20.00
2/15/39	"	" D138- 134	Issuer	6/25/37	Regers & Tracy	1000	55	550.00	420.00	130.00
2/4/39	"	" M116	National	3/7/39	W. S. Lang- ley Jr.	1000	55	550.00	540.00	10.00
4/4/39	"	" D21	Issuer	10/4/37	Herbert H. Greene & Co.	500.	60	300.00	280.00	20.00

Total 1938 4

NATIONAL REALTY TRUST

SECURITY TRANSACTIONS BY
 COLONIAL SECURITIES COMPANY with NATIONAL REALTY TRUST or SUBSIDIARIES
 MAY 24, 1934 to DECEMBER 31, 1934

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Difference between Cost and Selling Price	
									Cost	Price
5/15/36	Postal Facil- ities, Inc., 1st Hg. 5 1/2 Cm. Income Bonds	W167	Issuer	5/15/36	Carson Securities Co.	\$1000.	57	\$ 570.00	\$ 545.00	\$ 25.00
5/17/36	"	W396	Issuer	5/16/36	Etzel Middleton	1000.	57	570.00	550.00	20.00
7/5/36	"	W281- 2-3-5-8	Issuer	7/5/36	M. Levy	3000.	56-1/4	2912.50	2900.00	12.50
7/12/36	"	W399	Issuer	7/7/36	Maude H. Brown	1000.	56-1/4	562.50	525.00	37.50
4/20/36	"	W189	Issuer	4/25/36	D. F. Piller	1000.	60	600.00	520.00	80.00
2/9/40	"	W38- 36	Issuer	2/3/40	Lilley & Co.	2000.	52-3/4	1055.00	1050.00	5.00
7/6/36	"	W535	Issuer	7/5/36	Stella Vincent	1000.	56	560.00	550.00	10.00
1/17/36	"	W178	Issuer	1/17/36	Dunn & Co.	1000.	55	550.00	527.50	22.50
1/17/36	"	W350	Issuer	1/16/36	Geo. Royal	1000.	55	550.00	530.00	20.00
1/17/36	"	W425	Issuer	1/16/36	W. F. Cagood	1000.	55	550.00	530.00	20.00

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NATIONAL REALTY TRUST

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SECURITY TRANSACTIONS BY
 COLONIAL SECURITIES COMPANY WITH NATIONAL REALTY TRUST or SUBSIDIARIES
 MAY 24, 1935 to DECEMBER 31, 1941

Sale Date	Security	Bond No.	Sold to	Purchase Date	Purchased From	Par Value	Sale Price	Sale Amount	Difference between Cost and Selling Price
10/1/37	6929 N. Clark St. Bldg. Corp., 1st Mtge. 3% Income Bonds	B168- 169	Issuer	9/29/37	Lena B. Edmondson	\$ 1000.	\$ 95	\$350.	\$300. \$90.00
2/24/38	" "	B163- 164	Issuer	2/23/38	Wm. McKay Adm.	1000.	30	300.	250. 50.00
5/16/40	6748 Grandon Ave. Bldg. Corp. 1st Mtge. 3% Income Bonds	B37	Issuer	7/5/37	O.R. McLean	300.	30	150.	125. 25.00
9/23/35	Windsor Shore Bldg. Corp., 1st Mtge. 3% Income Bonds	B70	Issuer	4/25/35	Stein, Brennan & Co.	300.	21	105.	100. 5.00
9/16/37	" "	B237	Issuer	4/25/35	Walter Adler	100.	25	25.	10. 15.00
7/18/38	" "	B107- 108	Issuer	5/27/38	Walter Lecky & Co.	1000.	15	150.	130. 20.00
4/30/40	" "	B44- 47	Issuer	4/30/40	Garrett & Co.	1000.	25	255.	250. 5.00

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INVENTORY AND SALES BY
GOLDEN INVESTMENT COMPANY
NATIONAL REALTY TRUST FUND

456

Bond No.	Purchase Date	Purchased From	Sales Date	Sold To	Par Value	Cost	Selling Price	Difference between Cost and Selling Price
AUGUST 1937-1941 BONDING CO. 1st Mt. CHICAGO INCOME BONDS:								
3148-76- (Numbers encased 299-300 (for M-98 and M-441)	10/26/36	M.J. Broderick	8/5/36	L. Freshling	\$2,000	200.00	270.00	170.00
D308	8/14/36	P. Mannsbach	8/1/36		500.	75.00	92.00	17.00
D148	7/9/36	A. Compton	7/9/36	L.R. McLean	500.	200.00	200.00	0.00
D-44	10/25/36	M. Hellenbeck	10/1/36	H.L. Robinson	500.	400.00	200.00	0.00
D102-155)	9/23/36	Stein, Brennan Co.	9/23/36	M. Doubek	1,000	245.00	250.00	5.00
	10/1/36	M. Doubek	10/29/36	J. Korval	1,000	250.00	400.00	50.00
M398	7/1/36	Karna Johnson	7/1/36	C. Juliusen	1,000	480.00	500.00	20.00
L164)	9/23/36	Stein Brennan Co.	9/23/36	M. Doubek	500.	172.50	175.00	2.50
	10/31/36	M. Doubek	7/1/36	C. Juliusen	500	175.00	250.00	75.00
M441)	7/18/36	H. Johnson	7/18/36	L. Blair	2,000	980.00	1000.00	20.00
D88-)								
557)								
D19	7/18/36	H. Kulp	7/18/36	L. Blair	500.	245.00	250.00	5.00
D68-)	7/18/36	G. H. Murphy	7/18/36	L. Blair	1,500	750.00	750.00	0.00
63-)								
163,)								
M386-387 }	8/5/36	W. F. Bennett	8/4/36	Addison Hickox	2,000	800.00	1000.00	200.00
M377	8/5/36	W. F. Bennett	8/11/36	G.H. McLean	1,000	400.00	500.00	100.00
M378	8/5/36	W. F. Bennett	8/6/36	L. Goldman	1,000	400.00	450.00	50.00
M378-380 }	8/5/36	W. F. Bennett	8/28/36	C. Juliusen	2,000	800.00	1000.00	200.00
M415)	9/18/36	H. L. Earl	5/24/36	A. Hickox	3,000	1050.00	1500.00	450.00
414)								
415)								
D1040-109)	10/18/37	Selected Investments Co.	10/14/37	L. Goldman	3,000	900.00	1185.00	285.00
M 44)								
47)								
D130-131 }	1/12/38	Gilbert Johnson	1/1/38	A. Gagan	1,000	450.00	450.00	0.00
D143-144)	2/22/38	Wm. Hickey, Adm. M. Doubek Estate	3/31/38	C. Juliusen	1,000	300.00	450.00	150.00

Total 1820.00

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456
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1-4

**PURCHASES AND SALES BY
COLUMBIA SECURITIES COMPANY
NATIONAL REALTY TRUST GROUP**

ARLINGTON STATION BUILDING CORPORATION. 1st MORTGAGE BONDS:

Bond No.	Purchase Date	Purchased From	Sales Date	Sold To	Par Value	Cost	Selling Price	Difference between Cost and Selling Price
206-347-415-416-418	3/7/38	Acuison Nixon	3/7/38	Louis Goldman	\$5000.	\$1,780.00	\$2,080.00	\$ 300.00

BARTON POST OFFICE BUILDING CORPORATION. 2nd MORTGAGE BONDS:

Bond No.	Purchase Date	Purchased From	Sales Date	Sold To	Par Value	Cost	Selling Price	Difference between Cost and Selling Price
211	1/15/38	Fuller Brattenden & Co.	1/15/38	Darwin-Chairman	500.	30.00	33.00	3.00

GRAND RAPIDS FARMER POST BUILDING CORPORATION. 1st MORTGAGE BONDS:

Bond No.	Purchase Date	Purchased From	Sales Date	Sold To	Par Value	Cost	Selling Price	Difference between Cost and Selling Price
2-08	2/2/38	Lilley & Co.	2/2/38	Curtis H. Wylie, Trustee	1000.	500.00	545.00	45.00

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2.

PO. CASH AND SALES BY
COLONIAL SECURITIES COMPANY
BALTIMORE REALTY TRUST CORP.

Bond No.	Purchase Date	Purchased From	Sales Date	Sold To	Par Value	Cost	Selling Price	Difference between Cost and Selling Price
ARCTIC STATION BLDG. CORP. 1ST MORTGAGE 5% SECURED 1921- (Cont'd.):								
567- 68-69- 70-71- 72 }	8/21/38	L. Ambler	3/31/39	H. Cahill	25,000.	\$2175.00	\$2490.00	\$ 315.00
✓ 575-74	8/21/38	L. Ambler	5/31/39	C. Juliusson	2,000.	725.00	900.00	175.00
✓ 521	7/8/38	H. L. Robinson	7/8/38	C. Steinbach	500.	225.00	237.50	12.50
✓ 588	7/27/38	Gilbert Johnson	7/27/38	H. L. Robinson	500.	225.00	225.00	0.00
✓ 518- 519 }	10/17/38	N.Y. Trust Co.	10/17/38	L. Juliusson	2,000.	980.00	980.00	0.00
✓ 520	10/17/38	N.Y. Trust Co.	10/17/38	L. Juliusson	1,000.	440.00	480.00	40.00
✓ 521	10/17/38	N.Y. Trust Co.	10/17/38	C. Steinbach	1,000.	440.00	475.00	35.00
✓ 5182	11/12/38	Gilbert Johnson	11/14/38	G. H. McLean	500.	225.00	225.00	0.00
✓ 522	11/23/38	N.Y. Trust Co.	11/24/38	Wm. Zerk	1,000.	440.00	480.00	40.00
✓ 523- 524- 525 }	1/19/39	Kneeland & Co.	1/19/39	W. Zerk	2,000.		900.00	
✓ 518- 184 }	1/19/39	" "	1/19/39	C. Juliusson	1,000.	360.00	480.00	120.00
✓ 5201	1/19/39	" "	1/28/39	John Ward	500.	175.00	225.00	50.00
✓ 5278- 530 }	1/31/39	F. Ambler	2/10/39	H. D. Francis	1,000.	380.00	480.00	100.00
✓ 528	4/11/39	H. Johnson	4/11/39	C. Stem	1,000.	430.00	412.50	17.50
✓ 529- 530- 531 }	4/10/39	H. Kulp	4/12/39	" "	5,000.	1800.00	1237.50	562.50
✓ 5108- 125 }	7/21/39	L. C. Tyley	8/2/39	C. Juliusson	1,000.	400.00	480.00	80.00
✓ 5123- 124 }	7/21/39	J. R. Pine	8/2/39	H. Juliusson	1,000.	400.00	480.00	80.00
✓ 5358 }	10/25/39	H. Hallenbeck	10/25/39	H. L. Robinson	500.	200.00	200.00	0.00
✓ 5359 }	12/23/39	N.Y. Trust Co.	12/23/39	C. J. Burckhardt	500.	220.00	225.00	5.00
✓ 5360 }	11/23/39	N.Y. Trust Co.	11/23/39	" "	500.	220.00	225.00	5.00
✓ 5275	7/9/35	A. Compton	7/9/35	G. H. McLean	500.	200.00	200.00	0.00

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**PURCHASE AND SALES BY
COLONIAL SECURITIES COMPANY
NATIONAL REALTY TRUST GROUP**

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Difference
between
Cost and
Selling
Price

Bond no.	Purchase Price	Purchased From	Sales Date	Sold To	Par Value	Cost	Selling Price	Difference between Cost and Selling Price
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AUSTIN STATION BUILDING CORP., 2ND MORTGAGE 5% INCOME BONDS:

M43	11/16/36	Estate of J. Lynch	11/16/36	Gilbert Johnson	\$1,000	200.00	225.00	25.00
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BERWYN POSTOFFICE BLDG. CORP., 1ST MORTGAGE 5% INCOME BONDS:

M16	5/18/37	Harris & Co.	5/18/37	A.M. Powell	1,000	200.00	200.00	0.00
M13	8/10/36	Steelman & Birkins			1,000	200.00	190.00	10.00
		\$1,000 bond M15 originally borrowed from Rose Tavin 3/11/36 sold to Kneeland & Co. at 36 replaced by M13.						
D27	8/10/36	Steelman & Birkins			500.	100.00	190.00	90.00
		\$500 bond originally borrowed from Rose Tavin 3/11/36 sold to Kneeland & Co. at 36 replaced by D27.						

DIVISION & LAVERGNE BLDG. CORP., 1ST MORTGAGE 5% INCOME BONDS:

M161	9/3/36	H. L. Kerl	9/4/36	Kneeland & Co.	1,000	250.00	420.00	70.00
M162-)	9/3/36	" " "	9/5/36	F. H. Fuller	4,000	1400.00	1600.00	200.00
163-)								
164-)								
166-)								
M167	9/3/36	" " "	9/9/36	Kneeland & Co.	1,000	350.00	420.00	70.00
D77	1/17/36	Theo. Beck	1/24/36	J. R. Wall	500.	200.00	200.00	0.00
	1/31/36	J. R. Wall	2/4/36	Kneeland & Co.	500.	200.00	225.00	25.00
M160	1/27/36	Dist. National Bank of Chicago	1/28/36	H. A. Pierce & Co.	1,000	375.00	450.00	75.00
D102	1/27/36	A. Richter	2/4/36	Kneeland & Co.	500.	200.00	225.00	25.00

Total \$760.00

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**PURCHASE AND SALES BY
COLONIAL SECURITIES COMPANY
NATIONAL REALTY TRUST GROUP**

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Bond No.	Purchase Date	Purchased From	Sales Date	Sold To	Par Value	Cost	Selling Price	Difference between Cost and Selling Price
<u>DEVISION & LAVERGNE BLDG. CORP., 1st MORTGAGE 4% INCOME BONDS: (Con'd.)</u>								
✓ 1188	9/3/35	H. L. Kerl	9/9/35	Kneeland & Co.	\$1,000.	\$ 380.00	\$ 480.00	\$ 70.00
✓ 1111	6/15/40	Weinress & Co.	6/23/41	J. Anderson	500.	125.00	225.00	100.00

GRAND RAPIDS PAPER POST BLDG. CORP., 1st MORTGAGE 4% CUMULATIVE INCOME BONDS:

✓ 1188- 1111 1111	5/22/36	Weinress & Co.	3/11/38	M. Levy	2,500.	1082.80	1187.50	125.00
✓ 1188	12/5/36	I. M. Simon & Co.	11/5/38	C. & O. Steinbach	1,000.	580.00	580.00	80.00

LOS ANGELES SERVICE STATION, INC., 1st MORTGAGE 4% INCOME BONDS:

✓ 1288- 280- 290- 291- 293	6/24/36	M. Johnson, exec.	2/11/38	A. Hickox	2,500.	125.00	800.00	875.00
✓ 1288	11/22/35	Eliz. Dillon	2/11/38	A. Hickox	500.	80.00	100.00	80.00
✓ 1277- 278- 279- 280- 283	6/29/40	M. Johnson	6/29/40	J. Anderson	4,500.	875.00	875.00	0.00

GORDEN PARK POST OFFICE BLDG. CORP., 1st MORTGAGE 4% INCOME BONDS:

✓ 1180	5/10/32	Gen. Ill. Nat. Bank & Tr. Co.	10/23/35	Eliz. Kappes	500.	80.00	200.00	120.00
✓ 1248- 1249	11/18/35	E. H. Hirst	11/18/35	Mrs. A. Schweitzer	2,000.	800.00	800.00	0.00
✓ 1207	2/20/35	G. R. Stone	5/29/37	J. R. Wall	500.	100.00	125.00	25.00
✓ 1254	11/15/35	H. Hallenbeck	11/15/35	E. L. Robinson	1,000.	800.00	800.00	0.00

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**PURCHASE AND SALES BY
COLONIAL SECURITIES COMPANY
NATIONAL REALTY TRUST GROUP**

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ADDITIONAL TRANSACTIONS 1st MORTGAGE BOND - PARKVIEW MANOR BUILDING COMPANY

<u>Purchased From</u>	<u>Purchase Date</u>	<u>Sold To</u>	<u>Date Sold</u>	<u>Per Value</u>	<u>Cost</u>	<u>Per Value</u>	<u>Selling Price</u>
Inventory							
Bonds on hand	8-19-34			\$2,800	\$ 275.00		
H. Johnson	8-23-34			7,800	3,232.75		
						(Cost includes (minor) bonds exchanged by H.J. Hulp for Parkview \$2,110.00)	
		Max Levy	8-4-35			\$5,000	\$2,000.00
		Louis Goldman	7-15-35			4,000	1,000.00
H. Hufay	2-23-35			800	40.00		
H. J. Hulp	2-25-35			1,400	850.00		
Gilbert Johnson	2-25-35			4,000	1,000.00		
Willie Witman	2-25-35					3,000	800.00
L. Goldman	4-3-35					2,000	800.00
H. L. Goldman	4-3-35					1,800	450.00
H. J. Hulp	5-15-35			3,700	750.00		
Gilbert Johnson	5-19-35			3,500	875.00		
G. Juliusen	10-17-35					4,000	1,800.00
G.J. Burkhart	12-23-35					300	180.00
H. Burket	12-23-35					1,500	680.00
G. H. Gump	2-21-36					800	180.00
Balance of \$100 bond included Bolton lot. sold at \$20.00							
TOTAL				\$21,100	\$8,543.75	\$22,000	\$8,800.00

TOTAL PROFIT -- 1356.25

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PURCHASE AND SALES BY
COLONIAL SECURITIES COMPANY
NATIONAL REALTY TRUST GROUP

Bond No.	Purchase Date	Purchased From	Sales Date	Sold To	Par Value	Cost	Difference between Cost and Selling Price	
							Selling Price	Selling Price
<u>ODDER PARK FORTOVIC, INC. CORP., 1st MORTGAGE 2d INCOME BONDS: (Con'd.)</u>								
✓ 1344-348 }	11/15/36	W. Hallenbeck	11/15/36	B. Cannon	\$2,000.	\$ 600.00	\$ 600.00	\$ 0.00
<u>PARKVIEW HARBOR BUILDING COMPANY, 1st MORTGAGE 2d INCOME BONDS:</u>								
✓ 1111-975-977-978-1002-1440 }	2/20/36	C. A. Higgins	2/1/36	H. Bannan	5,800.	1875.00	1488.00	110.00
✓ 11008-607 }	2/18/36	" "	2/18/36	W. & H. Landau	2,000.	800.00	800.00	100.00
✓ 11338-606-608-610 }	2/18/36	" "	2/21/36	P. Almeroth	4,000.	1000.00	1200.00	200.00
✓ 11871 }	3/14/36	Sadie Billet	3/29/36	L. Cowell	400.	125.00	150.00	25.00
✓ 11490 }	2/25/37	M. Greenfield	3/29/36	E. Witsman	500.	150.00	180.00	0.00
✓ 11078 }	3/26/36	H. Kulp	3/29/36	E. Cowell	1,000.	250.00	300.00	50.00
✓ 11095 }	1/20/36	C. A. Higgins	2/1/36	H. Bannan	1,000.	250.00	270.00	20.00
✓ 11061 }	5/15/36	B. B. Smart	5/31/36	G.W. & S. Conine	500.	125.00	150.00	25.00
<u>PORTAL FACILITIES, INC., 1st MORTGAGE 2d CUMULATIVE INCOME BONDS:</u>								
✓ 111-2-3-4-5 }	9/21/36	Burnett & Van Tyl	9/21/36	H. G. Townsend	5,000.	2060.00	2351.00	290.00
✓ 1167 }	9/21/36	Lilley & Co.	9/21/36	Mrs. F. C. Brown	1,000.	415.00	500.00	85.00
✓ 1171-172 }	10/16/36	Hickey Doyle & Co.	10/9/36	Carlyle Mutschler	2,000.	855.00	980.00	145.00
✓ 11175-178 }	1/14/37	L. M. Otis & Co.	1/14/37	A. M. Powell	2,000.	985.00	970.00	15.00
✓ 11214 }	1/25/37	G.P. Lyle & Co.	2/9/37	J. Burmeister	1,000.	420.00	485.00	15.00
✓ No Record }	1/25/37	L. M. Otis & Co.	2/16/37	B. B. Vincent	1,000.	420.00	492.80	72.80
✓ No Record }	1/25/37	L. M. Otis & Co.	2/20/37	L. M. Reed	1,000.	420.00	490.00	70.00

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PURCHASE AND SALES BY
 NATIONAL SECURITIES COMPANY
 NATIONAL REALTY TRUST GROUP

Bond No.	Purchase Date	Purchased From	Sales Date	Sold To	Par Value	Cash	Selling Price	Difference between Cost and Selling Price
FURNACE FACILITIES, INC., 1st MORTGAGE 5 1/2% CONVERTIBLE INCOME BONDS								
✓ 1212	2/17/37	Hickey Doyle & Co.	2/16/37	J. Burneister	\$1,000.	\$ 425.00	\$ 436.00	\$ 10.00
✓ 1213	2/18/37	Hickey Doyle & Co.	2/18/37	L. Blair	500.	206.75	220.00	41.25
✓ 1214	2/19/37	J. F. Bailey & Co.	2/20/37	Wm. G. McDonnell	1,000.	420.00	427.50	7.50
✓ 1215	2/19/37	Nicholson & Co.	2/19/37	Genevieve Cook	500.	202.50	220.00	47.50
✓ 1216	2/19/37	Dugore & Tracy	2/19/37	Marie Walsh	1,000.	419.00	414.00	104.00
✓ 1217	2/19/37	Nicholson & Co.	2/19/37	E. Burneister	500.	222.50	222.75	44.25
✓ 1218	2/19/37	Nicholson & Co.	2/19/37	H. Harrison	1,000.	404.00	409.00	55.00
✓ 1219	2/19/37	"	2/19/37	V. Van Borne	1,000.	404.50	404.00	50.00
✓ 1220	2/19/37	L. Adams & Co.	2/17/37	A. L. Gern	1,000.	410.00	470.00	60.00
✓ 1221	2/19/37	H. Levy	7/2/37	G. Grudolph	1,500.	575.00	702.50	24.50
✓ 1222	2/19/37	"	7/2/37	C. Steen	1,000.	420.00	427.50	17.50
✓ 1223	2/19/37	"	7/2/37	C. Steinbech	2,000.	800.00	1000.00	100.00
✓ 1224	2/19/37	Lilley & Co.	7/2/37	C. Steen	1,000.	420.00	427.50	57.50
✓ 1225	7/2/37	Doyle O'Connor & Co.	7/2/37	"	1,000.	420.00	427.50	47.50
✓ 1226	2/20/37	Lilley & Co.	2/20/37	G. B. McLean	1,000.	420.00	500.00	70.00
✓ 1227	2/20/37	"	2/20/37	D. S. Allen	1,000.	420.00	500.00	70.00
✓ 1228-1230 } 122-123 } 124-125 }	2/20/37	"	2/20/37	L. Goldson	5,000.	2125.00	2200.00	250.00
✓ 1229	2/22/37	"	2/22/37	H. Levy	2,500.	1205.00	1275.00	70.00
✓ 1230	2/22/37	"	2/22/37	H. Levy	4,000.	1725.00	2200.00	250.00
✓ 1231	2/24/37	A. Hicken	2/24/37	L. Goldson	2,000.	1000.00	1000.00	0.00
✓ 1232	2/27/37	A. S. Powell	2/27/37	H. Levy	1,000.	1000.00	1000.00	0.00
✓ 1233	2/28/37	H. S. Greene & Co.	2/28/37	L. Goldson	2,000.	995.00	1000.00	115.00

PURCHASES
 TOTAL 12,377.12
 12,377.12

Bond No.	Purchase Date	Purchased from	Sales Date	Sold to	Par Value	Cost	Selling Price	Difference between Cost and Selling Price
<u>POSTAL FACILITIES, INC., 1st MORTGAGE 3 1/2% JULY 1, 1925 (Cont'd.)</u>								
8316-317	9/25/37	H.E. Greene & Co.	10/27/37	A. Goldman	\$2000.	\$ 885.00	\$980.00	\$105.00
8453	9/10/36	F.F. Fox & Co.	9/10/36	F.E. Smith	1000.	470.00	470.00	40.00
	10/28/37	F.E. Smith	11/12/37	M. Levy	1000.	470.00	500.00	70.00
8246	10/28/37	" "	11/12/37	" "	1000.	430.00	500.00	70.00
8292	11/12/37	H.E. Greene & Co.	11/12/37	" "	1000.	445.00	500.00	55.00
849	11/27/37	F.B. Gahn & Co.	11/12/37	M. Levy	1000.	490.00	500.00	50.00
8188	8/20/37	Lilley & Co.	8/25/37	" "	1000.	430.00	450.00	20.00
847	10/23/35	Fuller Rodney & Co.	10/23/35	H.G. Townsend	1000.	445.00	487.50	22.50
8374	7/5/35	McChie & Diessel	10/23/35	" "	1000.	472.50	475.00	2.50
8215	8/21/36	Knobland & Co.	8/21/36	" "	1000.	410.00	470.00	60.00
844	10/23/35	Fuller Rodney & Co.	10/23/35	" "	1000.	445.00	545.00	80.00
8134	4/12/37	G.A. Alberto & Co.	4/12/37	Mrs. E. Gartung	1000.	420.00	540.00	120.00
848	10/23/35	Fuller Rodney & Co.	10/23/35	H. G. Townsend	1000.	445.00	545.00	80.00
8405	5/10/37	J.F. Bailley & Co.	5/10/37	A. Schweitzer	1000.	430.00	497.50	67.50
8187	8/20/37	Lilley & Co.	8/23/37	Gert. Johnson	1000.	430.00	500.00	70.00
8130	2/19/37	Wickey Doyle & Co.	3/16/37	J. Barnister	1000.	425.00	435.00	10.00
8202	5/28/37	Rogers / Tracy	5/28/37	E. Witsman	1000.	400.00	500.00	100.00
8291	8/20/37	Lilley & Co.	8/24/37	G. H. Harves	1000.	430.00	500.00	70.00
8168	3/30/37	McNeal & Co.	4/9/37	Carrie Vlekweg	500.	210.00	242.50	32.50
8420-421	9/10/36	F.F. Fox & Co.	9/10/36	L. Glute	3000.	1290.00	1530.00	240.00
422	4/13/38	L. Glute	4/13/38	L. Goldman	3000.	1500.00	1575.00	75.00
8392	3/10/37	G. P. Lyle & Co.	3/10/37	L. Blair	1000.	430.00	500.00	70.00
	4/13/38	M. Gartung	4/13/38	L. Goldman	1000.	500.00	525.00	25.00
8371	4/13/38	Gilbert Johnson	4/13/38	L. Goldman	1000.	500.00	525.00	25.00
844	4/15/37	Michaelson & Co.	4/2/37	H. E. Gwoll	1000.	405.00	487.50	82.50
836	5/10/37	J.F. Bailley & Co.	5/3/38	Genevieve Cook	500.	215.00	230.00	35.00
834	5/10/37	J.F. Bailley & Co.	6/24/38	E. Barnister	500.	215.00	242.50	47.50
8313	9/25/37	H.E. Greene & Co.	9/20/37	Ettye Gady	1000.	442.50	510.00	67.50

PROPERTY AND MORTGAGE
COLLECTOR, DISTRICT OF COLUMBIA
NATIONAL TRUST COMPANY

Paid	Purchase		Sales				Selling
No.	Date	Debtor's Name	Date	No.	Date	Debtor's Name	Price
MORTGAGE FACILITIES, 1917-1918 MORTGAGE \$15							
2447	5/11/17	William Bond	4/11/17	2448	5/11/17	W. Bond	2,000.00
2448	5/10/17	P. F. Fox & Co.	5/10/17	2449	5/10/17	P. F. Fox & Co.	2,000.00
2449	5/10/17	J. P. Pailley & Co.	5/10/17	2450	5/10/17	J. P. Pailley & Co.	2,000.00
2450	5/10/17	Rogers & Tracy	5/10/17	2451	5/10/17	Rogers & Tracy	2,000.00
2451	5/10/17	H. G. Townsend	5/10/17	2452	5/10/17	H. G. Townsend	2,000.00
2452	11/16/17	O. P. Lyle & Co.	5/10/17	2453	5/10/17	O. P. Lyle & Co.	2,000.00
2453	5/10/17	Wickley Doyle & Co.	5/10/17	2454	5/10/17	Wickley Doyle & Co.	2,000.00
2454	1/25/17	O. P. Lyle & Co.	1/20/17	2455	1/25/17	O. P. Lyle & Co.	2,000.00
2455	5/10/17	A. H. Powell	1/17/17	2456	5/10/17	A. H. Powell	2,000.00
2456	12/2/17	Fuller Crutchen & Co.	12/2/17	2457	12/2/17	Fuller Crutchen & Co.	2,000.00
2457	1/10/17	S. Levy-Special	1/10/17	2458	1/10/17	S. Levy-Special	2,000.00
2458	5/10/17	Steelman & Birkin	5/10/17	2459	5/10/17	Steelman & Birkin	2,000.00
2459	5/10/17	E. Cannon	5/10/17	2460	5/10/17	E. Cannon	2,000.00
2460	5/10/17	Ray McConnell	5/10/17	2461	5/10/17	Ray McConnell	2,000.00
2461	5/10/17	H. G. Townsend	5/10/17	2462	5/10/17	H. G. Townsend	2,000.00
2462	5/10/17	H. G. Townsend	5/10/17	2463	5/10/17	H. G. Townsend	2,000.00
2463	5/10/17	H. G. Townsend	5/10/17	2464	5/10/17	H. G. Townsend	2,000.00
2464	5/10/17	H. G. Townsend	5/10/17	2465	5/10/17	H. G. Townsend	2,000.00
2465	5/10/17	H. G. Townsend	5/10/17	2466	5/10/17	H. G. Townsend	2,000.00
2466	5/10/17	H. G. Townsend	5/10/17	2467	5/10/17	H. G. Townsend	2,000.00
2467	5/10/17	H. G. Townsend	5/10/17	2468	5/10/17	H. G. Townsend	2,000.00
2468	5/10/17	H. G. Townsend	5/10/17	2469	5/10/17	H. G. Townsend	2,000.00
2469	5/10/17	H. G. Townsend	5/10/17	2470	5/10/17	H. G. Townsend	2,000.00
2470	5/10/17	H. G. Townsend	5/10/17	2471	5/10/17	H. G. Townsend	2,000.00
2471	5/10/17	H. G. Townsend	5/10/17	2472	5/10/17	H. G. Townsend	2,000.00
2472	5/10/17	H. G. Townsend	5/10/17	2473	5/10/17	H. G. Townsend	2,000.00
2473	5/10/17	H. G. Townsend	5/10/17	2474	5/10/17	H. G. Townsend	2,000.00
2474	5/10/17	H. G. Townsend	5/10/17	2475	5/10/17	H. G. Townsend	2,000.00
2475	5/10/17	H. G. Townsend	5/10/17	2476	5/10/17	H. G. Townsend	2,000.00
2476	5/10/17	H. G. Townsend	5/10/17	2477	5/10/17	H. G. Townsend	2,000.00
2477	5/10/17	H. G. Townsend	5/10/17	2478	5/10/17	H. G. Townsend	2,000.00
2478	5/10/17	H. G. Townsend	5/10/17	2479	5/10/17	H. G. Townsend	2,000.00
2479	5/10/17	H. G. Townsend	5/10/17	2480	5/10/17	H. G. Townsend	2,000.00
2480	5/10/17	H. G. Townsend	5/10/17	2481	5/10/17	H. G. Townsend	2,000.00
2481	5/10/17	H. G. Townsend	5/10/17	2482	5/10/17	H. G. Townsend	2,000.00
2482	5/10/17	H. G. Townsend	5/10/17	2483	5/10/17	H. G. Townsend	2,000.00
2483	5/10/17	H. G. Townsend	5/10/17	2484	5/10/17	H. G. Townsend	2,000.00
2484	5/10/17	H. G. Townsend	5/10/17	2485	5/10/17	H. G. Townsend	2,000.00
2485	5/10/17	H. G. Townsend	5/10/17	2486	5/10/17	H. G. Townsend	2,000.00
2486	5/10/17	H. G. Townsend	5/10/17	2487	5/10/17	H. G. Townsend	2,000.00
2487	5/10/17	H. G. Townsend	5/10/17	2488	5/10/17	H. G. Townsend	2,000.00
2488	5/10/17	H. G. Townsend	5/10/17	2489	5/10/17	H. G. Townsend	2,000.00
2489	5/10/17	H. G. Townsend	5/10/17	2490	5/10/17	H. G. Townsend	2,000.00
2490	5/10/17	H. G. Townsend	5/10/17	2491	5/10/17	H. G. Townsend	2,000.00
2491	5/10/17	H. G. Townsend	5/10/17	2492	5/10/17	H. G. Townsend	2,000.00
2492	5/10/17	H. G. Townsend	5/10/17	2493	5/10/17	H. G. Townsend	2,000.00
2493	5/10/17	H. G. Townsend	5/10/17	2494	5/10/17	H. G. Townsend	2,000.00
2494	5/10/17	H. G. Townsend	5/10/17	2495	5/10/17	H. G. Townsend	2,000.00
2495	5/10/17	H. G. Townsend	5/10/17	2496	5/10/17	H. G. Townsend	2,000.00
2496	5/10/17	H. G. Townsend	5/10/17	2497	5/10/17	H. G. Townsend	2,000.00
2497	5/10/17	H. G. Townsend	5/10/17	2498	5/10/17	H. G. Townsend	2,000.00
2498	5/10/17	H. G. Townsend	5/10/17	2499	5/10/17	H. G. Townsend	2,000.00
2499	5/10/17	H. G. Townsend	5/10/17	2500	5/10/17	H. G. Townsend	2,000.00

Total \$865.00

**PURCHASE AND SALES BY
COLONIAL SECURITIES COMPANY
NATIONAL REALTY TRUST FUND**

Stock No.	Purchase Date	Purchased From	Sale Date	Sold To	Per Value	Cost	Unrealized Gain
1st MORTGAGE 3 1/2% INTEREST BONDS:							
✓ 2114	5/25/37	W. H. Moore & Co.	9/21/37	L. Coleman	\$1,500.	\$ 165.00	\$ 420.00
✓ 2157	2/17/38	Anderson, Flete & Co.	9/21/37	" "	2,000.	200.00	420.00
2115-2117 2118-2119 2120-2121 2122-2123 2124-2125 2126-2127 2128-2129 2130-2131	4/14/38	W. A. Pearlman	5/5/38	P. & L. Albrecht	10,500.	1512.00	2226.00
✓ 2199- 2200	5/25/37	G. H. Murphy	9/29/37	A. Hickox	2,000.	700.00	700.00
	5/25/40	W. J. Farrey, Exec. A. Hickox	9/29/40	J. Anderson	2,000.	250.00	300.00
✓ 221- 222	5/25/37	F. Higgins	9/29/37	A. Hickox	1,000.	360.00	250.00
	5/25/40	W. J. Farrey, Exec. A. Hickox	9/29/40	J. Anderson	1,000.	175.00	200.00
✓ 223	5/24/38	W. S. Bruhn, Inc.	5/10/38	G. Olsen	500.	95.00	180.00
✓ 224	5/24/38	" "	5/11/38	Gert. Grunwaldt	1,000.	280.00	300.00
✓ 225	5/17/38	F. Higgins	5/25/38	H. & L. Coble	1,000.	360.00	350.00
✓ 226	5/31/38	W. L. Johnson	5/31/38	Marie Raich	1,000.	380.00	380.00

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NATIONAL REALTY TRUST

SECURITY TRANSACTIONS BY MYRTLE JOHNSON
MAY, 1935 to DECEMBER 31, 1941

Sales Date	Security	Bond No.	Sold to	Purchase Date	Purchased From	Par Value	Sales Price	Sales Amount	Cost	Difference between Cost and Selling Price
4/11/39	Austin Station Bldg. Corp., 1st Mtge. 3% Income Bond.	M43	Gilbert Johnson purchased from Colonial Securities Company	11/14/38	at 22 1/2	\$1000.	40	400.00	\$225.00	\$ 175.00
6/29/40	Los Angeles Service Station, Inc., 1st Mtge. 5% Income Bonds	M77-378-379-380; M153	(Old numbers: 463 Colonial 1/11/40 from Colonial Securities Company)	1/11/40	from	4500.		675.00	100.00	195.00
		368)		6/11/40				380.00		
7/31/40	"	M45 (Old number) 381 (new number)	Issuer	"	"	1000	20	200.00	180.00	50.00
6/26/35	Forkview Manor Bldg. Co., 1st Mtge. 6% Income Bonds	686-688-689-690	Colonial Securities Co.	9/18/35	Kneeland	5000	18 1/2	762.80	762.80	0.00
6/26/35	"	"	No Record	"	"	2500	16 1/2	381.25	381.25	0.00
11/4/38	"	C751	National 11/4/38	Martin	umber Co.	100	25	25.00	25.00	0.00

Total \$430.00

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NATIONAL REALTY TRUST

SECURITY TRANSACTIONS BY MYRTLE JOHNSON
MAY 24, 1935 to DECEMBER 31, 1941

<u>Sales</u> <u>Date</u>	<u>Security</u>	<u>Cont</u> <u>No.</u>	<u>Sold To</u>	<u>Purchase</u> <u>Date</u>	<u>Purchased</u> <u>From</u>	<u>Par</u> <u>Value</u>	<u>Sales</u> <u>& Pur-</u> <u>chase</u> <u>Price</u>	<u>Sales</u> <u>Amount</u>	<u>Difference</u> <u>between</u> <u>Cost and</u> <u>Selling</u> <u>Cost Price</u>
11/4/35	Windsor Share Bldg. Corp., 1st Mtge. 25 Income Bonds	D2- 3-4	Issuer		Martin Yamher & Co.	\$1600. 20	\$ 300.00	\$ 300.00	\$ 0.00
6/22/39		D144	Colonial Securities Co.	May 1939	Firpo National Bank of Chgo.	\$100. 20	100.00	75.00	25.00

EXHIBIT III-B

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NATIONAL HEALTH TRUST

SECURITY TRANSACTIONS BY MYRTLE JOHNSON

AUG 24, 1936 to JAN 31, 1941

Sales Date	Security	Sold No.	Purchase Price	Purchased From	Par Value	Sales & Purchase Price	Sales Amount	Cost	Difference between Cost and Selling Price
	Martin Station Bldg. Corp., 1st Mtge. 34 (Spads)	2432	Exchanged for DE29 & 145 with Marie Walsh same price	2/24/38 Colonial Securities Company	\$1000.	45		\$ 450.00	
3/19/40	Los Angeles Service Station, Inc., 1st Mtge. 34 Income Bonds	(2463) Mary Higgins is an error.) @ 15 Should be 2466 464-465-467-468	1/11/40	Colonial Securities Company	2000.	10	\$ 750.00	500.00	\$ 250.00
4/23/40	"	DE29-290-291-292-293 @ 15	4/11/40	"	2000.	11	375.00	275.00	100.00
	"	N351 Issued (for old number 465)	7/21/40	"	1000.	15	200.00	150.00	50.00

470

470

NATIONAL REALTY TRUST
JACOB KULF

Date	Security	Bond Nos.	Sold to Issuer	Purchase From	Per Value	Sales Price	Cost	Profit or Loss
May 5, 1939	Postal Facilities second mortgage bonds.		Colonial	K.J. purchase from Doyle, O'Connor & Co. 1/2/1938	2,000.	200.	150.	450.00

Total \$450.00

521

82-
Exhibit
May 21

EXHIBIT IV-B

NATIONAL REALTY TRUST

SECURITY TRANSACTIONS BY MATTIE J. HALL
MAY 25, 1935 to DECEMBER 31, 1943

Sales Date	Security	Unit No.	Sold to	Purchase Date	Purchased From	Par Value	Sales & Pur- chase Price	Sales Amount	Cost	Difference between Cost and Selling Price
5/13/35	Parkview Manor Hdg. Co. 1st Mge. 48 Income Bonds & Glass "A" Pfd. Stock	2074	Colonial Sec. Securities 1934 Co.	By Myrtle Johnson from Rose Platt Dec. 1934 @ 15.	1000.	25	250.00	150.00	100.00	
5/13/35	Postal Facil- ities, Inc. 1st Mge. 3 1/2 Gen. Income Bds.	2113		(This item was not sold to Colonial by Mattie J. Hall but by Mattie I. Gady.)						

NATIONAL REALTY TRUSTS MAX & SALLY LEVY.

Sales Date	Security	Bond No.	Sold To	Purchase Date	Pur. Price	Per Value	Sales Amount	Cost	Profit or Loss.
Not sold	Berwyn 2nd Mtge.			5/21/39	Colonial	500.		\$ 75.	
10/11/38	Grand Rapids								
	1st MSB-91-D21		Col.	3/21/38	"	1500.	1250.	1187/50	\$ 62.50
All Ogden Park Bonds are part of Bolton securities									
	Parkview Manor Building Corp. first mortgage bonds 1013-1023-1024/5-1058 \$5,000.		Exchanged for Quincy Station First mortgage bonds aggregating \$5,500 with H.J. Kulp whose cost was \$2110.	3/6/35	"	5000.	0	2000.	
6/29/37	Postal Facilities, Inc. 1st mtge. 402-407 447	Col.		5/10/37	"	3000.	1380	1290.	80.00
				6/14/37	"	1500.	675.	675.	0
7/6/39	" " 281-2-3-286-285	Col.		8/25/37	"	3000.	1350.	1675.	390.00
				9/17/37	"	1000.	580	500	80.00
				11/12/37	"	1000	530	500	80.00
6/29/37	" " 402-407			5/10/37		2000.	900.	880.	40.00
			Not Sold						
	247	Col.		1/6/37		21500.	100.	52250.	0
						100.	427.50	425.	2.50

Total \$ 715.00

523

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NATIONAL REALTY TRUST

SECURITY TRANSACTIONS - VARIOUS UNUSUAL ITEMS
BY GILBERT JOHNSON
MAY 24, 1935 to DECEMBER 12, 1941

By Gilbert Johnson - Brother of Myrtle Johnson:

Sales Date	Security	Bond No.	Sold to	Purchase Date	Purchased from	Par Value	Sales & Purchase Price	Sales Amount	Cost	Difference between Cost and Selling Price
11/12/38	Austin Station Bldg. Corp., 1st Mtge. 38 Income Bonds	1162	Colonial Securities Co.	7/27/38	Myrtle Johnson	200.	45	\$225	150.00	75.00
2/23/39	" "	1229- Issued 245 (Exchanged for \$452 \$1000 bond deliv. to Marie Walsh)			Myrtle Johnson	1000.	45	450	450.00	0.00
11/14/38	Austin Station Bldg. Corp., 2nd Mtge. 38 Income Bonds	1143	Gilbert Johnson deliv. to Myrtle Johnson who held until 4/11/39.			1000.	22 1/2		225.00	
5/24/38	Division & LaVergne Bldg. Corp., 1st Mtge. 38 Income Bonds	047	Colonial Securities Co.	5/19/38	Oak Pl. Trust & Sav. Bk.	100.	40	40	25.00	15.00

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NATIONAL REALTY TRUST

SECURITY TRANSACTIONS SHOWING UNUSUAL ITEMS
MAY 24, 1936 to JANUARY 31, 1941

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales & Purchase Price	Sales Amount	Cost	Difference between Cost and Selling Price
<u>By Emma Johnson--Mother of Myrtle Johnson:</u>										
3/29/40	Los Angeles Service Sta- tion Inc., 1st Mtge. 3% Income Bonds	D183- 286	281- 281- Issuer		By Emma Johnson	\$2500.	25	625.00	375.00	250.00
3/29/40	"	D354	01- Emma 24-25-Johnson		By Colonial Securities Co.		15	375.00		
3/29/40	"	D357	Issuer		By Emma Johnson	500	25	125.00	75.00	50.00
3/30/40	"		Emma Johnson		By Colonial Securities Co.		15	75.00	50.00	25.00
4/4/39	"		Colonial Securities Co.		By Cassie Meyer		10	50.00	50.00	
3/29/40	"	D363	Issuer		By Emma Johnson	500	25	125.00	75.00	50.00
3/30/40	"		Emma Johnson		By Colonial Securities Co.		15	75.00	50.00	25.00
3/29/39	"		Colonial Securities Co.		By H. H. Collins & Sons		10	50.00		
3/29/40	"	D376	Issuer		By Emma Johnson	500	25	125.00	75.00	50.00
3/30/40	"		Emma Johnson		By Colonial Securities		15	75.00		
3/29/40	"	D378	Issuer		By Emma Johnson	500	25	125.00	75.00	50.00
3/30/40	"		Emma Johnson		By Colonial Securities Co.		15	75.00	25.00	50.00
4/24/36	"		Colonial Securities Co.		By Myrtle John- son, Emeth.		5	25.00		

Total 2550.00

[illegible]

SUBSIDIARIES
FEDERAL FACILITIES REALTY TRUST
NATIONAL REALTY TRUST
ADDITIONAL BAUMANN TRANSACTIONS

Sales Date	Security	Bond No.	Sold To	Purchase Date	Purchased From	Par Value	Sales & Purchase		Sales Price	Sales Amount	Difference between Cost and Selling Price	
							Price	Amount			Cost	Price
8/28/38	Ogden Park P.O. Bldg. Corp.	388-386	Issuer	4/15/35	Geo. H. Andresen Acct. & 17 1/2 who purchased from Colonial 9/28/34 same price	2000.	17 1/2	600.00	350.00	250.00		
9/1/38	Austin Station Bldg. Corp., 1st Mtge. bonds	M366-374-437-449-D48-305; C477-492-493-578	Colonial Securities Company	4/15/35	Geo. H. Andresen Acct. & Lot price	5400.	Lot	2376.00	1930.00	546.00		

Total \$ 796.00

8 cc - 211106 - pay 77

22 H.C. 50 credits 27

196.00

32,992.50

527.27

E. P. K. 21

SECURITIES DELIVERED TO MR. DARROW MAY 19, 1936 FROM LOT 1.

Issue	Par Value	Check issued by	Price	Total
Station "D" Bldg. Corp.	\$24,500.00	Federal Facilities Realty Trust	3.00	\$ 735.00
Ferry Station Post Office, Inc. 2nd Mortgage	25,200.00	Federal Facilities Realty Trust	.50	126.00
Irving Park Post Office Bldg. Corp. - 2nd Mortgage	2,000.00	Federal Facilities Realty Trust	15.00	300.00
Roseland Building Corp.	300.00	Federal Facilities Realty Trust	3.00	9.00
United States Building Corp. 2nd Mortgage	5,000.00	United States Building Corp.	10.00	500.00
22nd Street Station Building Corporation	6,000.00	Federal Facilities Realty Trust	30.00	1,800.00
22nd Street Station Building Corporation	1,000.00	22nd Street Station Bldg. Corp.	30.00	300.00
Villa Building Corporation	3,000.00	Federal Facilities Realty Trust	3.185	95.55
Ogden Park Post Office Building Corporation	3,800.00	Ogden Park Post Office Bldg. Corp.	30.00	1,140.00
6929 North Clark Street Building Corporation	8,500.00	6929 N. Clark Street Bldg. Corp.	32.64	2,775.00
Windsor Shore Building Corp.	2,000.00	National Realty Trust	20.00	400.00
Windsor Shore Building Corp.	9,400.00	Chairman Account	20.00	1,880.00
Windsor Shore Building Corp.	5,000.00	Windsor Shore Building Corp.	20.00	1,000.00
Parkview Manor Building Co. 2nd Mortgage	32,900.00	National Realty Trust	3.50	1,197.00
North Halsted Post Office Building Corporation	100.00	North Halsted Post Office Bldg. Corp.	30.00	30.00
	<u>\$128,700.00</u>			<u>\$12,447.55</u>

1945



1941	1942	1943	1944	1945	1946
463996	45510	4205	4991		
		87907	157539	87938	
1331970	787000	655180	701100		
6031707	700000	75000			
630707	30000	(3974)	158779	3001	
87000	15005	15005	8005		
771613	767000				
6009508					
6009500	10000	10000	10000		
651247		(10000)	(10000)		
6009500	10000	10000	10000		

JACOB KULP & CO.

SUMMARY OF BALANCES IN BUILDING AND CASH ACCOUNTS AT THE END OF EACH YEAR FROM
DEC. 31, 1924, TO DEC. 31, 1929, AND AS AT JUNE 30, 1930, ON THE BOOKS OF JACOB KULP & CO.

	DEC. 31, 1924	DEC. 31, 1925	DEC. 31, 1926	DEC. 31, 1927	DEC. 31, 1928	DEC. 31, 1929
	DR	CR	DR	CR	DR	CR
ARMOUR STATION BLDG CORP.				191,786.	17,778.07	87,177.
AUSTIN STATION BLDG CORP.				188,900.5	16,661.71	68,000.
BERRYMAN P.O. BLDG CORP.				49,813.6	3,574.6	39,670.3
CHICAGO P.O. SERVICE BLDG CORP.	50,000.		7,700.60	35,600.14	3,700.74	25,000.00
CHAMBERLAIN P.O. BLDG INC.			3,700.00	3,700.00	3,700.00	3,700.00
DALLAS P.O. STATION INC.		10,000.00	9,000.15	11,000.00	7,807.15	6,000.00
STATION 3 BUILDING CORP.			49,800.00	49,800.00	49,800.00	100,700.00
BRUNSON & LAVERGNE BLDG CORP.						30,700.00
STATION F POSTAL FACILITIES			7,000.00	17,353.35	7,160.19	3,700.00
STATION 10 BLDG CORP.	700.	3,000.00		3,700.00	0,170.00	1,700.00
LOUISIANA BLDG CORP.				13,700.00	9,675.00	10,000.00
STATION PARK P.O. BLDG CORP.		12,660.00	9,000.00	3,700.00	6,160.00	6,000.00
LABORERS P.O. BLDG CORP.					45,000.00	3,000.00
MEMPHIS SERVICE STATION	18,370.00	5,700.00	10,000.00	3,000.00	1,591.90	3,000.00
CHICKLEY PARK STATION		5,000.00	0.00	0.00	5,316.00	6,000.00
NORTH HALSTED P.O. BLDG CORP.			9,600.00	8,000.00	3,700.00	3,000.00
DOHEN PARK P.O. BLDG CORP.					1,370.70	0.00
PARKVIEW MANOR BLDG CO.	67,000.00	176,100.00	160,000.00	7,000.00	7,000.00	46,000.00
QUINCY STATION P.O. BLDG CORP.		13,000.00		15,700.00	15,700.00	15,700.00
STATION 10 BLDG CORP.					17,000.00	17,000.00
ROSELAND BUILDING CORP.	(17,778.10)	4,000.00	3,000.00	3,000.00	7,000.00	15,000.00
U.S. BUILDING CORP. ST. LOUIS	(17,778.10)	18,000.00	5,000.00	5,000.00	4,166.67	1,000.00
SOUTH SIDE P.O. SERVICE BLDG CORP.			17,000.00	5,613.7	5,530.11	1,000.00
THIRTY SECOND ST. BLDG CORP.	(3,000.00)	3,000.00	3,000.00	33,454.7	3,000.00	1,000.00
VILLA BUILDING CORP.		47,000.00	10,000.00	10,000.00	11,400.00	1,000.00
WINDSOR SHORE BLDG CORP.			8,000.00	8,000.00	6,000.00	17,000.00
1708 CANNON AVE BLDG CORP.	77,900.00	48,000.00	60,000.00	70,000.00	78,500.00	87,000.00
TOTAL DR	919,000.00	739,700.00	577,000.00	136,190.19	137,355.64	731,400.00
TOTAL CR	(336,549.00)	(106,700.00)	(44,000.00)	(63,256.06)	(69,596.51)	(74,000.00)
TOTAL CH. IN BAL.	582,451.00	633,000.00	621,000.00	72,934.13	66,759.13	657,400.00

[illegible]

FORMS RELATIONSHIP REPORT I

Certain Data Relating to Reorganization Proceedings of Subsidiaries of Federal Facilities
Railway Trust, Including a Record of the Claims of Jacob Saly & Co., Inc., if any, Against
These Subsidiaries

<u>Entity</u>	<u>Date Form Filed</u>	<u>Date Plan Filed</u>	<u>Date Plan Submitted</u>	<u>Status of Plan & Co. Filed</u>	<u>Provision for Claims Against Saly & Co. in Plan</u>	<u>Claims of Saly & Co. as Scheduled by Debtor in Original Petition</u>
Gen. Post Office Serv. Bldg. Corp. (1928), N. D. Ill.	10/24/35	10/24/35	8/2/37 same pro tem as of 6/1/37	None	None	None
Chicago Rural Post Bldg., Inc.	No reorganization ?					
Station "B" Building Corp. (1928), N. D. Ill.	8/14/35	8/12/35	1/18/37	None	None	None
Union Rural Post Station, Inc. (1928), N. D. Ill.	7/24/35	8/1/35	11/22/35 same pro tem as of 5/27/36	None	None	None
Post Station Post Office, Inc. (1928), N. D. Ill.	1/11/35	1/1/37	1/18/37	None	\$5,000.00	None
Irving Park Post Office Bldg. Corp. (1928), N. D. Ill.	5/21/35	11/30/35	8/25/37	\$1,375.35	\$ 1,375.35	None 1/
Madison Park Station Bldg. Corp. (1927), N. D. Ill.	5/22/35	1/27/36	11/12/35	None	\$ 6,125.00	None 2/
North United Post Office Bldg. Corp.	Voluntary reorganization - Plan makes no provision for Jacob Saly & Co., Inc.					
Union Station Post Office Bldg. Corp. (1927), N. D. Ill.	5/22/35	10/2/35 (master plan) 12/26/35 (reorg. comp. plan) 5/1/36 (amend. plan of com.)	9/22/35 (Approved and confirmed)	(None) Report of claim 8/12/36	None	None
Rockland Building Corporation (1927), N. D. Ill.	5/25/35	None				None
South Side Post Office Serv. Building Corporation (1926), N. D. Ill.	6/18/35	1/21/36	10/10/35 same pro tem as of 6/2/36	None	None	None
United States Building Corp. (1915), N. D. Ill.	6/1/35	1/17/37	9/21/37 same pro tem as of 6/1/37	None	None	None
Twenty-Second Street Station Bldg. Corp. (1927), N. D. Ill.	5/21/35	8/2/35	11/22/35 same pro tem as of 6/2/36	None	None	None
Villa Building Corporation (1927), N. D. Ill.	5/25/35	1/21/36	7/27/35	None	None	None

1/ Petitioner recites that other liabilities include accounts of approximately \$1,000.00.

2/ Petitioner recites that there are accounts payable, but states no amount.

sec X 24 #
6/12/46

RE: FEDERAL FACILITIES REALTY TRUST

1. FERRY STATION POST OFFICE, INCORPORATED, Debtor.

The Amended Plan of Reorganization recognizes as indebtednesses of Debtor First Mortgage Bonds due February 15, 1934, in the principal amount of \$655,300.00; Second Mortgage Bonds due October 15, 1934, in the principal amount of \$197,900.00; interest on the aforesaid bonds, and in addition to a California State Income Tax claim, the amount of \$34,864.21 as "due Jacob Kulp & Co., Inc." an unsecured claim.

The Plan provides that the maturity date of the First Mortgage bonds is extended fifteen years from the first day of the second month following the confirmation of the Plan, and that the maturity date of the Second Mortgage bonds shall likewise be extended.

With respect to the unsecured claims, the Plan provides as follows:

"All general or unsecured claims, except any tax claim which may be considered a general claim, against the Debtor existing at the date of the approval of the petition herein on May 31, 1935, shall be suspended and no action for the enforcement of the same shall be taken until the maturity of the First Mortgage Bonds and Second Mortgage Bonds. No interest shall accrue upon such claims during such period. No statute of limitations as to such claims shall run during the aforementioned period."

2. IRVING PARK POST OFFICE BUILDING CORPORATION, Debtor.

The Plan of Reorganization recognizes as indebtednesses of Debtor First Mortgage Bonds due June 15, 1935 in the principal

Page 2.

RE: FEDERAL FACILITIES REALTY TRUST

amount of \$47,000.00; General Mortgage Bonds due June 15, 1935, in the principal amount of \$40,000.00; interest on the aforesaid bonds; certain real estate taxes, and unsecured claims as follows:

Due Jacob Kulp & Co., Inc.	\$4,375.36
Due Alfred S. Alschuler, Inc.	203.80

The Plan provides that in addition to the reduction of the rate of interest, the maturity dates of the First Mortgage and General Mortgage bonds are extended fifteen years until June 15, 1950.

With respect to the unsecured claims, the Plan provides as follows:

"All unsecured claims against the Debtor existing at the date of the approval of the petition herein on May 25, 1935 shall be suspended and no action for the enforcement of the same shall be taken until June 15, 1950. No interest shall accrue on such claims during such period. No statute of limitations shall run against said unsecured claims during the aforementioned period.

"No dividends shall be paid on the capital stock of the Debtor while any first or general mortgage bonds are still outstanding."

3. McKINLEY PARK STATION BUILDING CORPORATION, Debtor.

The Amended Plan of Reorganization recognizes as indebtedness of Debtor First Mortgage Bonds due January 1, 1936, in the principal amount of \$44,000.00, interest thereon, and in addition to real estate taxes, the amount of \$6,402.05 as "due Jacob Kulp & Co.," an unsecured claim.

Page 3.

RE: FEDERAL FACILITIES REALTY TRUST

The Plan provides that in addition to the reduction of the rate of interest, the maturity date of the First Mortgage bonds shall be extended to January 1, 1951.

With respect to unsecured claims, the Plan provides as follows:

"All unsecured claims against the Debtor existing at the date of the approval of the petition herein on May 25, 1935, shall be suspended and no action for the enforcement of the same shall be taken until January 1, 1951, nor shall any interest accrue thereon during such period. No statute of limitations as to said unsecured claims shall run during the aforementioned period.

"No dividends shall be paid on the capital stock of the Debtor during any time while said first mortgage bonds are still outstanding."

NATIONAL REALTY TRUST

Certain Data Relating to Reorganization Proceedings of Subsidiaries of National Realty Trust, including a Record of the Claims of Jacob Halp & Co., Inc., if any, Against These Subsidiaries

<u>Building</u>	<u>Date Petn. Filed</u>	<u>Date Plan Filed</u>	<u>Date Plan Confirmed</u>	<u>Claim of Halp & Co. Filed</u>	<u>Provision of Claim Allowed Halp & Co. in Plan</u>	<u>Claim of Halp & Co. as Scheduled by Debtor in Original Petition</u>
Junior Station Bldg. Corp. #4000, N. D. Ill.	6/13/35	2/3/36	12/1/36	None	None	None
Latin Station Bldg. Corp. #9630, N. D. Ill.	4/23/36	12/13/35	12/12/35	None	None	None
Swamp Post Office Bldg. Corp. #4000, N. D. Ill.	4/14/35	2/3/36	11/3/36	None	\$2975.00	None 1/
Division & Lawrence Bldg. Corp. #7145, N. D. Ill.	11/17/35	2/27/36	4/3/36	None	None	None
Grand Rapids Parcel Post Bldg. Corp. #5734, W. D. Mich.	2/7/36	7/27/36	not checked	not checked	None 2/	not checked
La Grange Post Office Bldg. Corp.	no reorganization					
Los Angeles Serv. Station, Inc. #6700, N. D. Ill.	2/4/36	11/2/36	1/23/37 same pro tem as of 12/14/36	Jon. Hansen as assignee of Halp & Co. filed claim \$2145.00. (Halp ind. filed claim \$1006.98)	\$2145.00 to Jacob Halp & Co. \$1006.98 to Jacob Halp	\$2145.00 - (Also \$1006.98 due Jacob Halp individually)
Udson Park Post Office Bldg. Corp. #57203, N. D. Ill.	9/6/36	3/11/37	4/7/37	None	None	None
Port View Manor Bldg. Co. #54094, N. D. Ill.	6/22/36	2/19/35	4/23/35	None	None	None
Postal Facilities, Inc. #40068, N. D. Ill.	5/25/35	4/3/37	12/31/37 same pro tem as of 12/27/37	None	\$50,929.48	None 3/
699 North Clark Street Bldg. Corp. (Rogers Park) #538176, Superior Ct., Cook County	4/11/33	foreclosure	No plan in court records 1/	Order confirming sale 10/23/35	No record of claims	
6740 Crandon Ave. Bldg. Corp. #557048, Superior Ct., Cook County		foreclosure	No plan in court records 1/	Order confirming sale 11/15/35	No record of claims	
Windsor Shore Bldg. Corp. #556386, Superior Ct., Cook County		foreclosure	No plan in court records 1/	Order confirming sale 7/12/35	No record of claims	

1/ Petition recites that other liabilities include accounts payable of approximately \$5,000.00.

2/ recites that \$4,600.00 in open account remains as an obligation.

3/ Petition recites that debtor has certain other liabilities including accounts payable.

4/ Order confirming sale recites that bondholders committee will redeem pursuant to plan.

Page 486 blank

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S E C 25 A 6/12/46

Re: National Realty Trust

1. Berwyn Post Office Building Corporation, Debtor.

The Amended Plan of Reorganization recognizes as indebtedness of Debtor First Mortgage 6% S. F. Gold Bonds Series "A" due June 15, 1937, in the principal amount of \$31,500.00; General Mortgage 6½% S. F. Gold Bonds Series "B" due June 15, 1937, in the principal amount of \$10,000.00; interest upon the aforesaid bonds, and as "due Jacob Kulp & Co." an unsecured claim in the amount of \$2,995.00.

The Plan provides that in addition to the reduction of the rate of interest, the maturity dates of the First Mortgage Series "A" bonds and General Mortgage Series "B" bonds are extended from June 15, 1937 to June 15, 1950.

With respect to the unsecured claims and shareholders of the Debtor, the Plan provides:

"All unsecured claims against the Debtor existing before the date of the approval of the Petition herein on June 17, 1935, shall be suspended and no action for the enforcement of the same shall be taken until June 15, 1950, nor shall any interest accrue thereon during such period. No statute of limitations as to said unsecured claims shall run during the aforementioned period. No dividends shall be paid on the capital stock of the Debtor during any time while first mortgage Series "A" and general mortgage Series "B" bonds are still outstanding."

2. Los Angeles Service Station, Inc., Debtor.

The Amended Plan of Reorganization recognizes as indebtedness of Debtor First Mortgage 6% Sinking Fund Gold Bonds due March 1, 1933 in the principal amount of \$214,100.00, interest on said bonds, and unsecured claims as follows:

537 Re: National Realty Trust

Due Jacob Kulp	\$1,006.98
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Due to assignee of trustee in bankruptcy of Jacob Kulp & Co., Inc.	2,145.04
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Due George H. Andresen, Trustee	62.59
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The Plan provides that the first mortgage bonds shall be cancelled and upon surrender the holder shall receive new first mortgage bonds in the principal amount of 50% of the unpaid principal of the bonds surrendered and Voting Trust Certificates covering shares of the Debtor at the rate of five (5) shares for each \$100 principal amount

of bonds surrendered. The Plan further provides that not less than 14,305 shares of no par value stock shall be issued.

The Plan provides with respect to unsecured claims:

"All general or unsecured claims against the Debtor, together with all interest accrued thereon, shall be cancelled. Each such unsecured claim shall receive a Voting Trust Certificate representing one share of stock of the Debtor for each \$100.00 of principal amount, exclusive of interest, of such claim. If the principal amount of any such claim be \$50.00 or more in excess of the last even \$100.00 amount, then the amount of said claim, for the purpose of determining the number of shares evidenced by the Voting Trust Certificates to be issued hereunder, shall be computed as the next \$100.00 even amount. If the principal amount of any such claim be less than \$50.00 in excess of the last even \$100.00 amount, then the amount of said claim, for the purpose of determining the number of shares to be evidenced by Voting Trust Certificates to be issued hereunder, shall be computed as the last preceding \$100.00 even amount."

The Plan further provides that the 100 shares of common stock of the Debtor shall ratably receive Voting Trust Certificates covering 3,568 shares.

538 Re: National Realty Trust

3. Postal Facilities, Incorporated, Debtor.

The Amended Plan of Reorganization recognizes as indebtednesses of Debtor First Mortgage Bonds due February 1, 1947 in the principal amount of \$495,000.00; General Mortgage 6½% Bonds (Second Mortgage Bonds) due February 1, 1937 in the principal amount of \$190,000.00; interest upon the aforesaid bonds and unsecured claims as follows:

Note payable to Federal Facilities Realty Trust	\$35,000.00
Interest on notes payable as of June 17, 1935	8,466.52
Due Jacob Kulp & Company, as of June 17, 1935	30,529.68
Due George H. Andresen, Trustee, as of June 17, 1935	2,985.18
Due National Realty Trust for management fee as of June 17, 1935	1,385.25
Due Barney-Ahlers Construction Corporation as of June 17, 1935	517.79

The Plan provides that the maturity dates of the First Mortgage bonds and the Second Mortgage bonds shall be extended to February 1, 1957 without a change in the principal amount. With respect to unsecured creditors, the Plan provides:

"The holders of all unsecured claims against the Debtor existing at the date of the approval of the petition herein on June 17, 1935, with the exception of Barney-Ahlers Construction Company, whose claim is in the amount of \$517.79, which claim upon the consummation of the Plan will be paid in full but without interest, shall be without any rights whatsoever against the Debtor, except to enforce their claims after all of the First and Second Mortgage bonds at any time outstanding shall have been retired, and interest shall not accrue on said claims from the date of their inception until all of the First and Second Mortgage bonds at any time outstanding shall have been retired, but shall accrue at the rate of 7% per annum thereafter. No statute of limitations as to these unsecured claims shall run during the aforementioned period."

539

S. E. C. Ex. 26.

Federal Facilities Realty Trust

Certain data relating to claims in reorganization proceedings of three subsidiaries: Ferry Station Post Office, Inc.; Irving Park Post Office Bldg., Corp.; and McKinley Park Station Bldg. Corp.

I. Ferry Station Post Office, Inc. #59504 U. S. District Court, N. D. Ill., E. D.

1. On December 23, 1935 the court entered an order requiring that claims and interests be filed on or before February 14, 1936 and stating that claimants and stockholders who fail so to file shall be excluded from participation in any plan except on order for cause shown. By subsequent orders the time for filing claims was extended to March 16, 1936 and again to April 10, 1936.

2. On November 12, 1936 Charles True Adams, Referee in Bankruptcy, as Special Master, filed his report on claims, interests and consents. Said report indicates that no claim was filed on behalf of Jacob Kulp & Co., Inc. or any assignee of Jacob Kulp & Co., Inc. or its trustee in bankruptcy.

3. On April 23, 1937 the court entered an order nunc pro tunc as of April 12, 1937 approving the amended plan of reorganization. Said order recites (Para. 5) that no general claims were filed; and said order further states (Para. 18) that "All persons who failed to file claims are barred from participating in the assets of the debtor or from asserting any claims against the debtor except to the extent that they are provided for by the plan as amended."

II. Irving Park Post Office Building Corp. #60069, U. S. District Court, N. D. Ill., E. D.

1. On November 30, 1936 the court entered an order requiring that all creditors and stockholders file claims and interests against the debtor on or before December 28, 1936, and stating that any creditor or stockholder who failed to file his proof of claim or interest within said period shall not participate in any plan except on order for cause shown.

2. On January 11, 1937 Charles True Adams, Referee in Bankruptcy, as Special Master, filed his report on claims and interests which shows that the following general claim was filed in Class IV: "Claim No. 4 filed by Jacob Kulp & Co., Inc. for the amount of \$4,375.36 moneys loaned to the debtor corporation by the claimant." Said claim, filed on December 28, 1936.

540 3. On February 15, 1937, nunc pro tunc as of January 18, 1937, a written withdrawal by Jacob Kulp & Co., Inc. of said Claim No. 4 was filed by leave of court. On the face of this withdrawal and filed therewith appears a written consent to the withdrawal of the claim by Louis Goldman "the attorney and agent for the assignee and present owner of the aforesaid claim of Jacob Kulp & Co., Inc., which assignee and owner acquired said plan from Michael Tauber & Co., a corporation, which company purchased said claim at a sale in bankruptcy made by Maurice Klein, Trustee in Bankruptcy of Jacob Kulp & Co., Inc."

4. On February 15, 1937 the court entered an order, nunc pro tunc as of January 18, 1937 approving the plan of reorganization. Said order states (Para. 7) that the aforesaid claim filed by Jacob Kulp & Co., Inc. has been withdrawn with the consent of the assignee thereof; and said order further recites that parties who failed to file claims are barred from participation except to the extent provided for in the plan.

III. McKinley Park Station Bldg. Corp. #60071, U. S. District Court, N. D. Ill., E. D.

1. On January 27, 1936, the court entered an order requiring that claims or interests be filed by March 6, 1936 and adding that any person who fails so to file shall not participate in any plan except on order for cause shown. The time for filing claims was subsequently extended to March 20, 1936 and again to April 10, 1936.

2. On August 12, 1936 Charles True Adams, Referee in Bankruptcy, as Special Master, filed his report on claims which report indicates that no claim was filed by Jacob Kulp & Co., Inc. or any assignee of Jacob Kulp & Co., Inc. or its trustee in bankruptcy.

3. On November 23, 1936 the court entered an order nunc pro tunc as of May 26, 1936 approving the plan. Said order states (Para. 5) that no general claims have been filed and further recites (Para. 18) that the time for filing claims had expired and that all persons who failed to file claims are barred from participation in the assets except to the extent provided for by the plan.

541

S. E. C. Ex. 27.

NATIONAL REALTY TRUST

Certain data relating to claims in reorganization proceedings of three subsidiaries: Berwyn Post Office Bldg. Corp.; Los Angeles Serv. Station, Inc.; and Postal Facilities, Inc.

I. Berwyn Post Office Bldg. Corp. #60281, U. S. District Court, N. D. Ill., E. D.

1. On February 3, 1936 the court entered an order requiring that claims and interests be filed on or before March 9, 1936 and reciting that any party who failed to file his claim or interest by said date shall not participate in any plan except on order for cause shown.

2. On November 7, 1936 Charles True Adams, Referee in Bankruptcy, as Special Master, filed his report on claims. Said report shows that no claim was filed on behalf of Jacob Kulp & Co., Inc. or any assignee, of Jacob Kulp & Co., Inc. or its trustee in bankruptcy.

3. On November 9, 1936 the court entered an order approving the amended plan of reorganization. Said order states (Para. 17) that all persons who failed to file claims are barred from participating in the assets or from

asserting any claim against the debtor except to the extent provided for by the plan.

II. Los Angeles Serv. Station, Inc. #67905, U. S. District Court, N. D. Ill., E. D.

1. On June 3, 1938 the court entered an order directing that claims and interests be filed by July 15, 1938 and stating that claims not so filed shall not participate except on order for cause shown.

2. On October 13, 1938 Wallace Streeter, Referee in Bankruptcy, as Special Master, filed his report on claims. Said report shows that the following two claims were filed: "No. 5 by Joseph Baumann, Assignee of Maurice Klein, Trustee in Bankruptcy of Jacob Kulp & Co., Inc. for \$2,145.04 for moneys advanced to debtor"; and "No. 6 by Jacob Kulp for \$1,006.98 for moneys advanced to debtor".

Both of said claims were filed on July 15, 1938.

542 3. On January 23, 1939 the court entered an order nunc pro tunc as of December 14, 1938 approving the amended plan of reorganization, and allowing claims including Claims No. 5 and No. 6 above described. Said order states (Para. 16) that the time for filing claims has expired and that persons who failed to file claims are barred from participating in the assets except on order for cause shown.

III. Postal Facilities, Inc. #60068, U. S. District Court, N. D. Ill., E. D.

1. On December 3, 1935 the court entered an order directing that all claims and interests be filed on or before January 15, 1936 and reciting that any creditor or stockholder who failed so to file shall not participate in any plan of reorganization except on order for cause shown. By subsequent orders the time for filing claims was extended to January 29, 1936, February 15, 1936, March 16, 1936 and April 14, 1936.

2. On August 12, 1936 Charles True Adams, Referee in Bankruptcy, as Special Master, filed his report on claims which shows that no claim was filed by or on behalf of Jacob Kulp & Co., Inc. or any assignee of Jacob Kulp & Co., Inc. or its trustee in bankruptcy.

3. On December 31, 1937 the court entered an order nunc pro tunc as of December 27, 1937 confirming the amended plan. Said order states (Para. 5) that the time for filing claims has expired and that all claims and interests not filed and allowed are barred and shall not partici-

pate except to the extent provided for in the amended plan.

543

S.E.C. EXHIBIT 28

June 12th, 1936

Jacob Kulp & Company
100 W. Monroe Street
Chicago, Illinois

Re: Joseph Baumann
New York City, New York

April 24, 1936 To balance due\$54,158.33

544

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 63175) • •

In the matter of	}	In Bankruptcy.
Jacob Kulp & Company		Proof of Debt
Bankrupt.		

At New York in Northern District of New York, on the 26th day of May, A. D. 1936 came Joseph Baumann of New York, in the County of New York, and State of New York and made oath and says that:

*1. He is the acting Treasurer of the a corporation, incorporated by and under the laws of the State of, and carrying on business at in the County of, and State of and that he is duly authorized to make this proof, and says that the said the person by—against—whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said corporation;

*2. He is one Joseph Baumann consisting of himself of New York in the County of New York and State of New York that the said Jacob Kulp & Company, the person by—against—whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to his, deponent's, said firm;

*3. the person by—against—whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of the said petition, and still is, justly and truly indebted to said deponent; in the sum of Fifty Four⁸ Thousand One Hundred Fifty Eight & 33/100 dollars; (\$54,158.33) that the consideration of said debt is as follows: Goods wares and merchandise sold and delivered at the special instance and request of said bankrupt, an itemized amount of which is hereto attached; that no note or judgment has been received by or in favor of this claimant upon said account unless otherwise set forth herein; that no part of said debt has been paid; that there are no set-offs or counter-claims to the same, and there has been received no manner of security for said debt whatever.

Subscribed and sworn to before me this 26 day of May 1936 said subscriber being known to me to be the person described in and who signed and swore to the above instrument.

Anna E. Botihof

Notary Public in and for the County of New York and State of New York.

(Notary Seal)

*Use Number "1" if creditor is a corporation. Number "2" if a partnership. Number "3" if an individual. Strike out paragraphs not applicable.

(L. S.)

Joseph Baumann

If the creditor is an individual he signs his own name on this line.

(L. S.)

..... V

(L. S.)

..... W

If the creditor is a corporation, the treasurer or officer performing the duties of treasurer signs his own name on the line "V" and underneath on the line "W" he signs name of corporation and affixes seal of corporation.

(L. S.)

..... X

(L. S.)

..... Y

If the creditor is a firm or co-partnership, a member of the firm signs his own name on line "X" and on line "Y" he signs name of firm.

(Over)

LETTER OF ATTORNEY

To Louis Goldman, A. B. Allshouse, F. V. Healy or R. G. Dreeffin, or The Undersigned Joseph Baumann of New York in the County of New York and State of New York do hereby authorize you, or any of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter or at such other time and place as may be appointed by the court for holding such meeting or meetings, or at which meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for, in the name of the undersigned to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of said bankrupt, and for the undersigned to assent to such appointment of trustee, and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due the undersigned under any composition, and for any other purpose in whatsoever interest of the undersigned; with full power of substitution, and the undersigned does hereby revoke any and all prior powers of attorney that may have been given by the undersigned.

In Witness Whereof, the name and seal of the undersigned is hereby affixed the 26th day of May A. D. 1936.

Joseph Baumann Seal
By

In case of corporation affix corporate seal:

AFFIDAVIT OF ACKNOWLEDGMENT

{ In case of individual or partnership, use this clause and strike out clause 5. } (4). State of New York } ss.
County of New York }

On this 26 day of May A. D. 1936, before me personally appeared Joseph Baumann to me known and known to me to be the person described in and who executed the foregoing power of attorney and a member of the firm of and who duly acknowledged to me that he executed the same for the purpose herein mentioned and on behalf of his said firm and that he was duly authorized so to do.

Anna E. Botihof
Notary Public of County of
State of
(Notary Seal)

{ In case of corporation use this clause and strike out clause 4. } (5). State of } ss.
County of }

On the day of, A. D. 193..., before me personally came to me known, who being by me duly sworn, did depose and say that he is the Treasurer of the the corporation described in and which executed the foregoing power of attorney; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

.....
Notary Public of County
State of
(Notary Seal)

S. E. C. Exhibit 28

497

No. 63175

**United States District Court
Northern District of Illinois**

IN BANKRUPTCY

**In The Matter Of
Jacob Kulp & Company**

Bankrupt

**Power Of Attorney and
PROOF OF DEBT**

Omnibus Form

Claim of Joseph Baumann

\$54,158.33

**Exhibited to me this day of
A. D. 193....**

.....
Referee in Bankruptcy

**Goldman, Allshouse & Healy
Attorneys and Counsellors at Law
5 South Wabash Avenue**

Phone Central 7676

Chicago, Illinois

Filed

Jun 12 1936

At O'clock M

Archie H. Cohen

Referee in Bankruptcy

545 And afterwards, on to wit, the 29th day of April, 1948, came the Special Master, Archie H. Cohen, pro se, and filed in the Clerk's office of said Court his certain Report On Final Report And Account of Paul E. Darrow, Former Trustee, Herein Filed on October 15, 1943, And Supplements Thereto Filed On February 11, 1944, Together With Objections Filed Thereto By The Securities And Exchange Commission, Stacy C. Mosser, As Successor Trustee Herein, and John W. Guild, As Successor Trustee, in words and figures following, to wit:

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IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 63175) • •

REPORT OF ARCHIE H. COHEN, SPECIAL MASTER, ON FINAL REPORT AND ACCOUNT OF PAUL E. DARROW, FORMER TRUSTEE HEREIN, FILED ON OCTOBER 15, 1943, AND SUPPLEMENTS THERETO FILED ON FEBRUARY 11, 1944, TOGETHER WITH OBJECTIONS FILED THERETO BY THE SECURITIES & EXCHANGE COMMISSION, STACY C. MOSSER, AS SUCCESSOR TRUSTEE HEREIN, AND JOHN W. GUILD, AS SUCCESSOR TRUSTEE.

TO THE HONORABLE WILLIAM H. HOLLY, JUDGE OF SAID COURT:

Honorable Sir:

I respectfully report unto this Honorable Court that under date of July 20, 1944 an order was entered by Your Honor in each of the above entitled cases wherein the Final Report and Account of Paul E. Darrow, the former trustee herein, and the Detailed Schedules supplementing said report filed subject to court order dated November 29, 1943, together with objections thereto, were referred to me as Special Master to conduct full and complete hearings thereon and to report my Findings of Fact and
547 Conclusions of Law with reference thereto to this Honorable Court.

Under date of September 29, 1944 I caused a notice to be mailed to the attorneys of record setting both matters for October 3, 1944 at 11:00 A. M. for the purpose of fixing a date when the hearings would commence and by agreement of counsel, the 25th day of October, 1944 at 2:00 P. M. was the time set for the presentation of evidence pertaining to the matters specially referred to the undersigned.

I was attended by Messrs. Deming, Jarrett & Mulfinger appearing on behalf of Stacy C. Mosser, successor trustee; Mr. G. Gale Roberson and Mr. John I. Mayer appearing on behalf of Securities & Exchange Commission; Messrs. Montgomery, Hart, Pritchard & Herriott, by Mr. Irving Herriott and Mr. W. Ward Smith, appearing on behalf of Paul E. Darrow, former trustee. Mr. Jacob B. Courshon appearing on behalf of John W. Guild, successor trustee under indenture dated October 1, 1929. Messrs. Goldman, Allshouse & Healy, by Mr. Louis Goldman, appearing on behalf of petitioning creditors, and Messrs. Gilruth & Beck, by Mr. Irwin T. Gilruth, appearing on behalf of F. B. Andrews, accountant.

Counsel agreed that the proofs submitted in both matters would be presented contemporaneously and the hearings commenced on October 25, 1944 at 2:00 P. M. at my office, Suite 1600, 10 South La Salle Street, Chicago, Illinois, and continued on various dates thereafter until May 28, 1947 when proofs were closed. Several objectors were ordered to file briefs by June 27, 1947, and the counsel for Paul E. Darrow were given until July 15, 1947 to file their brief and reply briefs by objectors within ten days thereafter.

Arguments were set for hearing on Tuesday, July 29, 1947 at 10:30 A. M. and lasted all day.

548 The oral evidence presented before me was taken down in short hand by Messrs. Shipman, Eamon & Moyer, court reporters, and duly transcribed, which transcript of evidence is submitted herewith in three volumes and by this reference thereto made a part of this report. I also transmit the documentary evidence offered by the parties who appeared before me and said documentary evidence is likewise made a part of this report.

THE OBJECTIONS FILED TO THE FINAL ACCOUNT AND REPORT OF PAUL E. DARROW, FORMER TRUSTEE, AS SUPPLEMENTED BY DETAILED SCHEDULES.

A. Objections of Securities & Exchange Commission.

On May 15, 1944 the Securities & Exchange Commission filed objections to the Final Report and Account of Paul E. Darrow, former trustee, covering the period from April 25, 1935 to and including August 13, 1943 as supplemented by Detailed Schedules filed on February 11, 1944, and to the application of said trustee for allowance of compensation in the matter of *Federal Facilities Realty Trust*.

Twelve specific objections were noted upon the following grounds:

1. That the operating expenses as set forth in the Final Report and Account totaled \$121,910.15, whereas the same expenses as shown in the Detailed Supplementing Schedules total \$119,696.13, a reduction of \$2,214.02, by which amount the receipts are also shown to be decreased.

2. The Detailed Supplementing Schedules reflect total interest of \$1,080.00 earned on United States Building Corporation second mortgage bonds held by the trustee, whereas the summary contained therein sets forth the receipt of only \$980.00 by way of interest on these bonds.

3. That said schedules disclose that in the purchasing and selling of securities by the trustee of first mortgage bonds of Ferry Station Post Office, Inc., a profit was determined by taking the difference between the purchase price of a particular bond and the selling price of a different bond of the same issue in at least five separate instances.

4. That the said schedules supplementing the Final Report and Account failed to show interest earned or accrued for several years on a number of the bondholdings of the trustee in certain subsidiaries, among which are Columbus Parcel Post Building, Inc.; North Halsted Post Office Building Corporation; Quincy Station Post Office Building Corporation; Roseland Building Corporation; South Side Post Office Service Building Corporation; 22nd Street Station Building Corporation; and Villa Building Corporation, and that the said Report and Account, together with the supplementing schedules give no explanation for the absence of such interest.

5. That the said schedules disclose that Paul E. Darrow as trustee has from time to time made unauthorized loans of trust funds to subsidiaries of the trust, and in particular made loans to Roseland Building Corporation between the dates of October 9, 1939 and August 27, 1942, totaling \$1,450.00, of which amount the sum of \$630.00 has been repaid, leaving an unpaid balance of \$820.00 owing by Roseland Building Corporation to Paul E. Darrow as trustee.

6. That the summary of operating expenses for the period covered by the Final Report and Account does not explain nor give any details as to an item of miscellaneous expense in the sum of \$1,413.10.

550 7. That the trustee has purchased from time to time various securities from two of his employees, namely Jacob Kulp and Myrtle Johnson, who have also occupied a fiduciary relationship, and from Colonial Securities Company, a corporation owned or controlled by these employees, and also from associates or affiliates of these two employees a large number of bonds of subsidiary companies upon the sale of which to the trustee these employees, Colonial Securities Company and affiliates and associates of the said employees have realized substantial profits for which the trustee has not accounted.

8. That the trustee retained in his employ on a salary basis Jacob Kulp and Myrtle Johnson who have operated a securities business in the same suite of offices with the trustee during the period covered by his Final Report and Account, and that said employees through the operation of their securities business purchased and sold securities of the subsidiaries of the trust estate utilizing information gained by them in the fiduciary relationship which they occupied as employees of the trustee and have realized by such trading in these securities substantial profits for which the trustee has not accounted.

9. That the Final Report and Account of Paul E. Darrow as trustee and the Detailed Schedules supplementing same are at variance in numerous instances with the record of purchases and sales of securities by the trustee as set forth by Frederick B. Andrews, certified public accountant, in his report filed herein on June 8, 1942 upon order of court.

10. That the Final Report and Account fails to explain

why Paul E. Darrow as trustee and as owner of all of the stock of Quincy Station Post Office Building Corporation, omitted to prosecute to a conclusion a cause of action against the members of the Board of Directors of 551 said Quincy Station Post Office Building Corporation, including Jacob Kulp and Myrtle Johnson, his employees, to recover a \$100,000.00 dividend illegally and improperly declared by resolution of said Board of Directors on November 22, 1930, and paid to Jacob Kulp on or about January 2, 1931; that the declaration of said dividend was illegal and improper because the said corporation at the time had earnings or earned surplus of only \$26,924.40 available for dividends, and its payment to Jacob Kulp was wrongful and improper because at that time and prior thereto all of the stock of this corporation was beneficially owned by Federal Facilities Realty Trust and pledged to secure its outstanding collateral trust gold bonds.

11. That neither the report nor the schedules contained detailed information regarding the purchases and sales of bonds of subsidiary corporations by the "Paul E. Darrow, Chairman Account," as required by order of court.

12. The S. E. C. also objects to the allowance of any further compensation to Paul E. Darrow as trustee upon the ground that the interim fees heretofore received by him are ample compensation for all of the services which he has rendered in view of the results accomplished, the size and ability of the estate to pay, and particularly in view of the conduct of the trustee in the administration of this estate.

Wherefore, the Securities and Exchange Commission respectfully asks that the Final Report and Account of Paul E. Darrow as trustee be disapproved, that Paul E. Darrow be disallowed any further compensation, and that he and the surety on his bond be surcharged in such amounts as may upon a hearing be properly determined. These objections bear the signatures of Thomas B. Hart, G. Gale Roberson and Leo J. Powers, attorneys for the Securities and Exchange Commission.

552 B. Objections Filed May 29, 1944 by John W. Guild, as Successor Trustee Under Indenture of Mortgage Dated October 1, 1929 Issued by the Debtor to the Final Report and Account as Supplemented of Paul E. Darrow, Trustee.

Fourteen grounds of objections were set forth and I summarized the same as follows:

1. That the trustee has failed to account for interest earned or accrued for several years on certain bonds held by him.

2. That the trustee has made unauthorized loans of trust funds from time to time, some of which have not as yet been repaid.

3. That the report and schedules fail to fully explain certain expenditures and fail to account for and properly explain the wiping out of certain accounts receivable due to the debtor and its subsidiaries.

4. That Paul E. Darrow as trustee retained in his employ on a salary basis Jacob Kulp and Myrtle Johnson, and that they purchased and sold securities of the subsidiaries of the debtor, utilizing information gained by them as employees of said trustee and in violation of the fiduciary relationship which they as such employees of said trustee occupied; that the substantial profits realized by Jacob Kulp and Myrtle Johnson rightfully belong to the estate of the debtor and should have been realized on behalf of the debtor by the said trustee who has failed to account for such profits; that the compensation paid to said employees should be ordered repaid to the present trustee and if not repaid that said Paul E. Darrow should be charged therefor and that all compensation paid to Jacob Kulp and Myrtle Johnson should be disallowed.

5. That Louis Goldman, an attorney representing certain parties in interest in these proceedings, became the owner and holder of certain securities issued by the debtor or one or more of its subsidiaries; that funds of said Paul

E. Darrow as trustee were used in connection with

the acquisition by said Goldman of said securities; that profits were realized therefrom and that certain of said securities rightfully belonging to the estate of the debtor are still held by said Goldman and that the trustee, Paul E. Darrow, has failed to account for said profits and has failed to reclaim said securities.

6. That there is a variance between the report and the Detailed Schedules filed by Paul E. Darrow as trustee, and the report filed by Frederick B. Andrews and said discrepancies are not as yet explained or accounted for.

7. That the trustee's Final Account and Report as

supplemented fails to give an accounting of all acts and transactions of Paul E. Darrow as trustee in connection with the so-called "Paul E. Darrow, Chairman Account."

8. That the so-called Andrews Report reveals numerous instances of purchases of securities issued by some of the subsidiaries of the debtor by Paul E. Darrow as trustee and a subsequent resale thereof to sundry persons, firms or corporations which the objector claims were improper and prejudicial to the interests of the debtor and its creditors and in violation of the orderly and prudent administration of the estate of the debtor by Paul E. Darrow as trustee.

9. That the trustee has failed to show a proper accounting with respect to the collateral trust gold bonds Series "A" 6½% maturing October 1, 1939 with persons, firms or corporations acting as selling or distribution agents of the debtor, particularly Jacob Kulp & Co., and has failed to reclaim such of said bonds for which the debtor received no consideration.

10. That the trustee's report as supplemented fails to account for distribution of claims of the debtor in the 554 case entitled "Seligman et al v. Jacob Kulp et al," filed in the Superior Court of Cook County, Illinois as cause No. 35, S 11241; wherein were involved certain claims and properties belonging to the debtor's estate.

11. That because Paul E. Darrow as trustee failed to file herein any inventory of the debtor's estate coming into his possession or any interim reports of his administration of the debtor's estate, a proper analysis of his said report as supplemented cannot be made without a detailed audit of all accounts and transactions, receipts and disbursements had during the administration of the debtor's estate by the said trustee, and that by reason of the failure of said trustee to file such interim and inventory reports and because his Final Report as supplemented does not conform to the orders of this court and the provisions of the Acts of Congress relating to bankruptcy the cost of such audit should be charged to and paid by said Paul E. Darrow.

12. That the report as supplemented fails to account for any commissions or discounts paid to the trustee or to any person, firm or corporation for his use and benefit on account of insurance purchased in connection with the

operation and management of the estate of the debtor and its subsidiaries.

13. That the report as supplemented fails to account for all fees and compensation paid to Paul E. Darrow as trustee in connection with the reorganization of each and every of the subsidiaries of the debtor; and has failed to account for sundry and other miscellaneous fees, commissions and salaries paid to said Paul E. Darrow as a director or officer of each and every of the subsidiaries of the debtor.

14. The said objector adopted all objections filed by the Securities and Exchange Commission. John W. 555 Guild signed the objections and asked that the Final Report and Account as supplemented by Paul E. Darrow as trustee be disapproved, that said trustee be disallowed any compensation herein, and that he and the surety on his bond be surcharged in such amounts as may be determined upon a hearing.

C. Objections of Stacy C. Mosser, Successor Trustee, filed May 29, 1944.

Stacy C. Mosser, successor trustee, filed twenty specific objections to the Final Account. The twenty-first objection merely adopts each and all of the objections heretofore filed by the Securities and Exchange Commission and expressly makes said objections "a part hereof by reference." The grounds of the objections are as follows:

1. That the item in the Final Account described as "miscellaneous expense" is not itemized.

2. That the Final Report is at variance with the supplementary Detailed Schedules.

3. The trustee made loans to subsidiary corporations in many instances without authority which have not been repaid and which claims are not set up as assets of this estate.

4. The discrepancy with respect to the interest received from United States Building Corporation, being the second objection filed by S. E. C.

5. The trustee permitted full-time employees of the trustee to engage in business ventures of their own and from which he did not receive any benefit.

6. That the trustee permitted Myrtle Johnson and Jacob Kulp and their associates and affiliates to occupy

office space paid for by this estate for the purpose of carrying on their individual business without payment 556 to the trust estate of expenses incurred for rent, telephone, stenographer, etc.

7. That the Colonial 'Investment' Company which was engaged in purchasing and selling securities was permitted to occupy space without proper reimbursement for the use of the said space and other incidental office expenses.

8. That Myrtle Johnson and Jacob Kulp and their associates and affiliates, while occupying a fiduciary relationship to this estate, obtained information concerning the financial condition of this estate and its subsidiaries which enabled them to deal in securities of this estate with a resultant profit to said persons and corporations and a loss to this estate and its creditors.

9. That Jacob Kulp was permitted by the trustee to engage in the insurance and real estate brokerage business to the detriment of this estate.

10. That the trustee failed to account for a portion of the fees received by him in the reorganization of the subsidiary corporations.

11. That the trustee failed to account for interest paid to him as trustee or which he should have received on bonds owned by this estate and on bonds purchased by his employes and their associates and affiliates.

12. That the trustee purchased securities from his employes and their associates and affiliates and permitted them to make a profit on said transactions, all of which profits, together with interest on the securities, should have been delivered up to this estate.

13. The trustee purchased securities and resold them at a profit to other than subsidiary corporations, thereby increasing the indebtedness of said subsidiaries and accordingly reducing the equitable interest of this estate in said subsidiaries.

557 14. That the trustee in furtherance of a plan to permit securities to be purchased through a "dummy" bidder for later delivery through the agency of Max Levy, Sally Levy and Colonial Securities Company to this estate, failed to take the necessary action in the matter of the sale of bonds of subsidiaries of this trust and other securities in the case of *Seligman v. Kulp et al*, No. 35 S

11241, then pending in the Superior Court of Cook County, which resulted in a substantial profit to said intermediaries.

15. The trustee failed to keep proper books of account, thus enabling his employees to engage in security transactions, the exact nature of which cannot be ascertained without great expense and loss to this estate.

16. That all salaries paid to Myrtle Johnson and Jacob Kulp and other employees who engaged in the purchase and sale of securities or otherwise derived profits while occupying any fiduciary relationship to this estate should be disallowed.

17. That salaries and fees paid to Paul E. Darrow, trustee, should be disallowed.

18. That all office expenses incurred for or by any person, firm or corporation other than this estate should be disallowed.

19. That further compensation to Paul E. Darrow, trustee, should be denied.

20. That no detailed accounting has been rendered showing the operations of "Paul E. Darrow, Chairman Account."

Deming, Jarrett & Mulfinger, attorneys for Stacy C. Mosser, successor trustee, signed the objections and asked that the Final Report and Account as supplemented by Detailed Schedules of Paul E. Darrow, trustee, be disapproved and that this court enter all necessary and proper orders to surcharge the said trustee and the surety on his bond for such sums of money as may be found due

his bond for such sums of money as may be found due 558 and owing to this estate upon a hearing of these objections.

OBJECTIONS FILED BY THE SECURITIES AND EXCHANGE COMMISSION AND BY STACY C. MOSSER, SUCCESSOR TRUSTEE, TO THE FINAL REPORT AND ACCOUNT OF PAUL E. DARROW, TRUSTEE, AS SUPPLEMENTED BY DETAILED SCHEDULES COVERING THE PERIOD FROM APRIL 25, 1935 TO AUGUST 13, 1943, AND THE APPLICATION OF SAID TRUSTEE FOR ALLOWANCE OF COMPENSATION IN THE MATTER OF NATIONAL REALTY TRUST, DEBTOR.

A. The Objections of the S. E. C. Were Filed on May 15, 1944, While the Objections Filed by Stacy C. Mosser, Successor Trustee, Were Filed on May 29, 1944.

Eight specific grounds are set forth in the objections of the S. E. C.:

1. The first specifies a variance between the Final Report and Account and the Detailed Schedules regarding operating expenses.

2. The second objection alleges that the Detailed Schedules failed to show interest earned or accrued for several years on certain of the bondholdings of the trustee in several subsidiaries and names Austin Station Building Corporation; Division and Laverne Building Corporation; Postal Facilities, Inc. (Station F); Grand Rapids Parcel Building Corporation; LaGrange Post Office Building Corporation; and Park View Manor Building Company.

3. It is urged that the Detailed Schedules reveal that Paul E. Darrow as trustee from time to time made unauthorized loans of trust funds to subsidiaries of the trust between the dates of January 7, 1936 and July 26, 1943 totaling \$76,015.50, of which amount the sum of \$69,515.50 was repaid, leaving an unpaid balance of \$6,500.00 as of August 13, 1943.

559 4. The trustee purchased from time to time various securities from Myrtle Johnson, an employee, who also occupied a fiduciary relationship and from Colonial Securities Company, a corporation owned or controlled by said Myrtle Johnson and Jacob Kulp, who were employees of the trustee occupying a fiduciary relationship and also from associates or affiliates of said Myrtle Johnson and Jacob Kulp a large number of bonds of subsidiary com-

panies, and that by reason thereof these employees and their affiliates and associates and Colonial Securities Company realized substantial profits for which the trustee has not accounted.

5. That the trustee retained in his employ on a salary basis Jacob Kulp and Myrtle Johnson who have operated a securities business in the same suite of offices with the trustee during the period covered by his Final Report and Account, and that said Jacob Kulp and Myrtle Johnson, through the operation of said securities business, purchased and sold securities of the subsidiaries of the trust utilizing information gained by them in the fiduciary relationship which they occupied as employees of the trustee and that both realized substantial profits by such trading, for which profits the trustee has not accounted.

6. That there is a variance between the report and the Detailed Schedules and the so-called Andrews Report.

7. That no detailed information regarding the purchases and sales of bonds of subsidiary corporations by the "Paul E. Darrow, Chairman Account" is included in either the Final Account and Report or in the Detailed Schedules supplementing the same filed by Paul E. Darrow, trustee, as required by order of court.

8. The S. E. C. objects to the allowance of any further compensation to Paul E. Darrow as trustee upon the ground that the interim fees heretofore received by him are ample compensation for all of the services which he has rendered in view of the results accomplished, the size and ability of the estate to pay, and particularly in view of the conduct of the trustee and the administration of this estate. The Securities and Exchange Commission respectfully asks that the Final Report and Account of Paul E. Darrow as trustee be disapproved, that he be disallowed any further compensation and that he and the surety on his bond be surcharged in such amounts as may upon a hearing be properly determined. The signatures appearing in said objections are those of Thomas B. Hart, G. Gale Roberson, Leo J. Powers, attorneys for Securities and Exchange Commission.

B. The Objections Filed by Stacy C. Mosser in the Matter are Identical With Those Interposed By the Securities and Exchange Commission, and While

20 Different Grounds are Listed, the Additional Reasons Assigned Relate to the Following Specific Objections:

1. That the trustee allowed the Colonial Securities Company to share his office without proper payment of expenses.

2. Allowed full-time employees of the trust to engage in business ventures of their own and from which the trust did not receive any benefit; that the trustee permitted Jacob Kulp to deal in insurance and real estate brokerage to the detriment of the estate; that the trustee has failed to account for a portion of reorganization fees received by him and also for interest paid to him or which he should have received on bonds owned by the estate and on bonds purchased by employees or their associates and affiliates. It further urges that the trustee purchased securities from his employees, thus enabling them to make a profit; that he failed to keep proper books of account. In all other respects the objections are identical with those interposed to the Final Report and Account of Paul E.

Darrow in the Federal Facilities Realty Trust matter 561 and are signed by Deming, Jarrett & Mulfinger as attorneys for Stacy C. Mosser, successor trustee, and conclude with the prayer that the Final Report and Account as supplemented by Detailed Schedules of Paul E. Darrow, trustee, be disapproved and that the trustee and the surety on his bond be surcharged for such sums of money as may be found due and owing to this estate upon a hearing of these objections.

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FINDINGS OF FACT

At the outset I feel impelled to state to this Honorable Court that the voluminous record in this case is due largely to the insistence by the objectors to elicit every minute detail with respect to the particular items which form the basis of their respective objections. At this point I also feel constrained to mention the fact that there was manifested throughout the entire proceedings on the part of counsel for Paul E. Darrow, the former trustee, whose Final Report and Account and Detailed Schedules were objected to by the Securities and Exchange Commission, the successor trustee, and John W. Guild, suc-

cessor trustee under indenture dated October 1, 1929, an earnest desire and willingness to permit the introduction of all pertinent data and evidence in support of the said objections. No attempt was made by Irving Herriott, Esq., senior counsel for Darrow, to hinder or obstruct the introduction into evidence of the mass of documentary proof and the testimony of the witnesses called by the objectors. I shall not attempt to summarize the evidence in the order in which it was presented, but feel that it will serve the purposes of the special reference of the former trustee's Final Account and Report and Supplementing Detailed Schedules together with the objections filed thereto, to present the major objections first and to classify the said Findings with respect to the particular objections interposed by the objectors aforementioned.

A. Findings of Fact Pertaining to General Dealings in the Securities of the Trusts and Their Subsidiaries by Darrow's Employees.

Miss Johnson and Jacob Kulp had been employed by Andresen, Darrow's predecessor, on a part-time basis, with the agreement that they would be allowed to continue their securities business. (Tr. 1639, 2339, 2340) It was largely on the advice of Andresen that Darrow retained Miss Johnson and Kulp in his employ. (Tr. 2150, 2341) Other important considerations appear to have been the intimate knowledge they possessed of the workings of the trusts and subsidiaries, and their personal familiarity with the security holders. (Tr. 2499)

Shortly after Darrow's appointment Miss Johnson made it clear that she would remain, at the salary of \$250 per month, only if she and Kulp were allowed to continue in the securities business through the operation of Colonial Securities Company. (Tr. 699, 700, 707, 708, 1639, 1641) Darrow knew that much of their business had involved securities of the trusts. (Tr. 711, 2378)

Darrow testified that he discussed this matter with his attorneys just after he became trustee, (Tr. 2339, 2340, 2356) and implies that he received at least tacit approval. However, Adams, Darrow's attorney, does not recall Darrow saying anything to him about Miss Johnson and Kulp conducting a securities business. (Tr. 2493, 2494) Darrow testified that he also discussed this arrangement

563 with his father, Judge Holly, Louis Goldman, Joseph

T. Harrington and Fred Silbert and others, and seems again to imply that he received some sort of tacit approval. (Tr. 2356, 2364, 2377, 2378, 2380) However, it appears that he did not specifically tell these persons that Miss Johnson and Kulp would be dealing in the securities of the subsidiaries. (Tr. 2360, 2378)

Darrow testified that at the time of these alleged conferences he did not know that Miss Johnson and Kulp were actually dealing in the securities of the trusts and subsidiaries. (Tr. 2364) He was not surprised to learn that this was the fact, however; (Tr. 2378). Adams says he is certain that he did not know that Miss Johnson and Kulp were trading in the underlying securities. (Tr. 2494) In fact he says he was not aware that Colonial, with whom the trusts shared offices (Tr. 46, 48) was owned by Darrow's employees. (Tr. 2495) Adams said he was informed by Darrow that Miss Johnson and Kulp were to be retained only on a temporary basis until he (Darrow) became oriented with respect to managing the trusts. (Tr. 2493, 2507)

During the period of Darrow's trusteeship, Miss Johnson had charge of the office, handled inquiries and complaints, advised the trustee on many phases of management, assisted in the reorganization of the subsidiaries and had available to her complete data pertaining to the subsidiaries, their incomes, expenditures, and sinking funds. (Tr. 51, 52, 367-371, 1928, 1929) Without doubt she was the best informed person in the organization insofar as the trusts and subsidiaries were concerned. (Tr. 889, 971, 972) She was acquainted with a large percentage of the bondholders (Tr. 69, 972, 1861), and as a consequence was the party with whom most of them conferred regarding their securities. (Tr. 68, 69, 2328)

Miss Johnson enjoyed Darrow's complete confidence (Tr. 54, 1012), and he appears to have been dependent upon her to some extent in the operation of the trusts.

(Tr. 889) Kulp, who for over a year was paid no salary, (Tr. 582, 886, 924, 925, 2150) operated the physical properties for Darrow. (Tr. 583, 584, 887) Like Miss Johnson, he had access to all records and information in the office, (Tr. 52, 888) and enjoyed Darrow's complete confidence. (Tr. 54) His knowledge of the details of the trusts, however, was somewhat less than that of Miss

Johnson. (Tr. 52) When put on a salary basis he received \$300 per month plus free use of an apartment worth \$135 to \$145 per month. (Tr. 582, 585, 586, 925).

Under these circumstances, Kulp and Miss Johnson, with Darrow's knowledge and apparent consent, engaged in the securities business through the operation of Colonial Securities Company (Tr. 927, 976) a substantial part of whose business consisted of transactions involving the securities of the trusts and their subsidiaries. (Tr. 1649)

Ordinarily Colonial purchased securities from and sold securities to persons outside the organization. (Tr. 976, 1067, 1068) In many instances, however, Miss Johnson purchased bonds of the underlying subsidiaries on behalf of Colonial or on her own behalf, (Tr. 376, 377) and re-sold them to Darrow as trustee, or as representative of the issuing subsidiary or of the Chairman Account. (Tr. 689, 978, 1067, 1068, 1645, 2288)

At all times Miss Johnson was familiar with the requirements of and the prices being paid by the sinking funds. (Tr. 698, 699, 721, 1012, 1017) She had this information because she aided Darrow in the determination of the amounts to be allocated for sinking fund operations and advised with him regarding adjustments in sinking fund prices. (Tr. 725, 1019, 1021, 1646, 1647)

Darrow had authority to fix the prices the trusts and subsidiaries would pay for bonds, except in the case of seven or eight subsidiaries where the boards of directors or special trust committees, with which Darrow conferred, (Tr. 1647) set maximum prices. (Tr. 718, 2332) Even in such cases, however, Darrow was usually given discretion to raise or lower the prices within prescribed limits. (Tr. 720)

Darrow testified that prices were determined largely by the speed with which bonds came in. If quickly, the prices were raised; if slowly, the prices were lowered. (Tr. 1008, 1009, 1020) In making these adjustments he conferred with Miss Johnson. (Tr. 726, 727, 1019, 1020) While she testified that Darrow set the prices by himself and that her opinions made little difference, (Tr. 1646, 1647) Darrow's testimony would tend to indicate that her judgments were more important than she admits. (Tr. 1019, 1020) Although, according to Darrow, she objected to raising prices as often as she agreed, she never discussed adjustment of prices when she offered bonds for sale. (Tr. 1019)

Thus, when bondholders came into the office desiring to sell bonds Miss Johnson knew what price Darrow was paying (Tr. 721) and purchased at a price below that figure. (Tr. 722, 1866) She told the security holders that they were getting the "market price" for their bonds (Tr. 1863) and purchased on her own behalf or on behalf of Colonial. The bonds so purchased were subsequently resold to Darrow (Tr. 1864). In almost every case Miss Johnson or Colonial made a profit. (SEC Exs. 5 and 6) Occasionally Colonial sold bonds at cost or less, (Tr. 1646) but Miss Johnson testified that she, personally, always sold at a profit. (Tr. 1818, 1819)

Darrow testified that the prices he paid Colonial or Miss Johnson were no higher than those he paid other bondholders. (Tr. 2333) Seldom, he said, at one point in his testimony, was the maximum price paid for bonds purchased from Miss Johnson or Colonial. (Tr. 2333) 566 According to Darrow, his recollection was that he paid Miss Johnson the last price paid unless there had been some significant change in market conditions since the last sale was made. (Tr. 2289, 2290, 2334)

He knew he was purchasing from Colonial and Miss Johnson (Tr. 1021) but denies having any knowledge that they were selling to him at a profit. There is abundant testimony to the effect that Darrow never asked Miss Johnson what she or Colonial paid for the bonds they sold to him. (Tr. 700, 701, 711, 715, 718, 727, 728, 979, 980, 1013, 1021, 1022, 2289, 2327, 2367) It is also clear that Miss Johnson never volunteered this information. (Tr. 701, 711)

It was Darrow's position that their profits, if any, on sales to him, were none of his concern. (Tr. 948, 1002, 1004) He considered the price asked by Miss Johnson a "personal" matter. (Tr. 1018) He testified that he thought it was appropriate to permit Miss Johnson, Kulp or Colonial to make a profit so long as the price paid them was no higher than anyone else received. (Tr. 2356) He never attempted to bargain or get bonds at lower prices. (Tr. 726) He said he treated Colonial as just another bond house. (Tr. 2330, 2331) He testified that he would expect Miss Johnson and Colonial to sell to him at the highest price obtainable, but does not know whether this thought occurred to him at the time. (Tr. 1021) He never

asked for an accounting (642, 728) nor did he discuss these purchases with his attorneys. (Tr. 948, 980)

Darrow testified that he had no knowledge that people were coming to the office and selling bonds to Miss Johnson, Kulp, or Colonial (Tr. 2327, 2328, 2368, 2369) who would resell them to him at a profit, later in the same day, or a few days later. (Tr. 1863, 1864; SEC Exs. 5 and 6)

Occasionally Miss Johnson would bring a bondholder directly to Darrow to sell bonds. (Tr. 1015) when not 567 in the market himself (because of lack of funds) he would refer bondholders to Miss Johnson or Colonial as prospective purchasers. (Tr. 1016)

There is no evidence that Darrow participated in any explicit scheme or plan to defraud the trusts. Miss Johnson testified that she never received any compensation of any kind from her or from Colonial, and that his only participation was as a purchaser. (Tr. 1819) Although he did not traffic in the securities of the trusts and subsidiaries for personal profit, Darrow was under the impression that he had a perfect right to do so, provided he did not sell to the trusts and subsidiaries at prices higher than those generally prevailing in the market. He refrained from such dealings, he said, only out of consideration for his father and Judge Holly, fearing that his transactions might possibly be attacked unwarrantedly. (Tr. 2351-2356) His attorney, Adams, he said, did not advise him regarding such dealings. (Tr. 2355)

Darrow admitted that he had been requested by his attorneys to discharge Kulp and Miss Johnson. He said Adams suggested this in the following words: "If Miss Johnson and Mr. Kulp remain in there they will gradually get control and take these companies away from you and me both, and neither of us will have any income from them." (Tr. 2341, 2342) This seems consistent with the previous testimony of Williamson, a member of the same firm, as related by Goldman. (Tr. 217) Darrow insisted, however, that no one else ever advised him to discharge these employees. (Tr. 2343)

Adams told a different story. He testified that he advised Darrow to dispense with the services of Miss Johnson and Kulp (Tr. 2499) He denies, however, making the statement attributed to him by Darrow. (Tr. 2501) He said that he raised the question of the discharge of these employees many times, telling Darrow that he

568 (Adams) was "fearful that if the company was re-organized and Miss Johnson and Mr. Kulp emerged as controlling the two top trusts, it would be a reflection on his trusteeship and should not be countenanced." (Tr. 2502) He said he felt that if Miss Johnson "stayed in as a close confidential advisor of the trustee, it would not be good for the bankruptcy administration of the companies." (Tr. 2502)

With reference to securities transactions involving Max and Sally Levy, Emma Johnson, Gilbert Johnson, and George Peterson, there is a gap in the evidence. The testimony establishes that Darrow knew of the Levys' friendship with Kulp (974, 975) and of the other parties' relation to Miss Johnson. (Tr. 975, 975) It is now shown, however, that there was any type of systematic purchase by them through Colonial for subsequent resale to Darrow at a profit.

The total cost of all securities of Federal purchased by Darrow and retained by him to the time of his resignation was \$31,864.55. (Final Report and Account; Tr. 1773-1775) Each bond, said Miss Johnson, was purchased by him at market price. (Tr. 1775) At the date of his resignation the bonds were said to have a market value of \$38,321.50 (FR&A; Tr. 1776, 1777). Up to that time \$24,494.34 in interest had been collected. (Tr. 1797) In October 1945, Miss Johnson, in a letter to Roberson, indicated that the market value of these bonds at the time was \$80,885. (Tr. 1778) On September 25, 1946 she stated the market value to be \$87,100. (Tr. 1788)

As of the date of Darrow's resignation there had been a loss on only one group of bonds purchased. The loss on certain Quincy Station Post Office Building Corporation second mortgage bonds amounted to \$220. (Tr. 1780) Interest on these collected up to that time, however, 569 amounted to \$1,966.25. (Tr. 1798) On September 25, 1946, Miss Johnson stated that the value of these bonds had risen substantially since Darrow's resignation. (Tr. 1799, 1800).

The total cost of securities of National purchased by Darrow and retained by him to the time of his resignation was \$47,469.25. (FR&A; Tr. 1789) Each bond, said Miss Johnson, was purchased by him at the market price or lower. (Tr. 1789, 1790) No bond was purchased for more than its market value. (Tr. 1790) At the date of his

resignation the bonds were said to have had a market value of \$56,635. (FR&A; Tr. 1791) Up to that time \$21,412.81 in interest had been collected. (Tr. 1797) In October 1945, Miss Johnson, in a letter to Roberson, indicated that the market value of these bonds at the time was \$75,294. (Tr. 1792) On September 25, 1946 she stated the market value to be \$77,179. (Tr. 1796, 1797)

570 B. Findings of Fact Pertaining to Darrow's Purchase of Securities Involved in the Seligman Case.

In 1935, a suit was filed in the Superior Court of Cook County, Illinois, involving the special trust containing securities relinquished to Andresen by Kulp. (SEC Ex. 4, p. 5) A decree subsequently entered therein directed that the securities be sold at public auction on May 6, 1938. Darrow knew of the Seligman case and was aware of which securities were involved in it. (Tr. 1049) Long before the sale was decreed (Tr. 984) he evidently felt that the purchase of those securities by him would be beneficial to the trusts and instructed his attorney to seek permission of the Court to bid for the securities. (Tr. 944) Such permission was denied for reasons which were never brought out in the testimony. (Tr. 945, 2294) Darrow said he felt quite badly at this frustration of his attempt to aid the trusts. (Tr. 954)

Although Darrow was aware that the Seligman sale was about to take place (Tr. 939, 940) and desired to purchase as many of the securities related to the trusts and subsidiaries as he possibly could (Tr. 941), it does 571 not appear that he petitioned the Court for permission to bid at this sale. He would appear to have been under the impression that he was still barred from purchasing those securities.

Other persons were also interested in the disposition of the securities involved in the case. According to Goldman, he was concerned over the possibility that purchase of the securities of the top trusts by an unfriendly party would make adoption of what he considered a proper plan of reorganization of the trusts more difficult. (Tr. 217) He testified that Williamson, one of Darrow's attorneys, was seriously concerned for the same reason "and also for the further reason, as he stated to me, that if those securities perhaps get into the hands of strangers, he might find himself out in the cold because they would con-

trol those top trusts and Mr. Darrow would probably have no further interest." (Tr. 217) Goldman further testified that Williamson stated that it was his opinion that Darrow was in no position legally to make any bid. (Tr. 218, 226) He also said that Williamson, Norman Miller (one of his associates), and he discussed the situation several times with Miss Johnson and perhaps Darrow—but he was not sure whether Darrow was at the conferences (Tr. 218). It was suggested that perhaps Miss Johnson could induce Baumann, who had an interest, to bid at the sale. (Tr. 219)

Sometime later, according to Goldman, Miss Johnson informed him that she could furnish the purchaser and the funds if he could arrange for the purchase of the securities at a price under \$25,000. (Tr. 220) He suggested that Michael Tauber and Co. be engaged to make the purchase for a brokerage commission, since he did not want to appear as the purchaser. (Tr. 220) He said that he was satisfied, after talking with Miss Johnson, that "those securities of the top trusts would be available for a plan of reorganization that would be acceptable to and approved by the bondholders and those interested." (Tr. 220)

Goldman made the arrangements for the purchase in Michael Tauber & Co., giving them authority to bid up to an amount which, including their commission would not exceed \$25,000 for all the securities. (Tr. 221, 285, 302)

At the sale the securities were segregated into two groups—Lot I, which consisted of bonds of the subsidiaries in the principal amount of \$199,000 was bid in at \$8050. Lot II, which consisted of securities of the top trusts of \$1,178,720 par value or stated value \$286,100 principal amount of Federal bonds, 62,358 units of beneficial interest of Federal and 10,761.6 units of beneficial interest of National. (Tr. 286, 468, 1123, 1124, 1844) were bid in at \$15,001. Thus all the securities were purchased by Michael Tauber and Co. for \$23,051 (Tr. 268) on May 6, 1938 (Tr. 395). Michael Tauber & Co.'s commission—five per cent—amounted to \$1,152.55 (Tr. 302).

Goldman's ledgers indicate that he gave Michael Tauber & Co. his firm's check for \$7,700 on an "exchange of checks" transaction on the day of the sale, May 6, 1938. (Tr. 255, 256) Miss Johnson testified that she gave Gold-

man a check of Max Levy payable to Goldman, Allshouse and Healy (Tr. 424) dated May 9, 1938, for a like amount (Tr. 260, 261), however there is no testimony as to the date of transfer.

Goldman's ledgers also indicate that he gave Michael Tauber & Co. his firm's check for \$16,503.55 on another "exchange of checks" transaction on May 19, 1938 (Tr. 255, 256), the day the securities were turned over to Michael Tauber and Co., by Master Bolton. (Tr. 287, 288) Miss Johnson testified that she gave Goldman a check of Max Levy payable to Goldman, Allshouse and Healy (Tr. 424) for \$2300 which was dated May 16, 1938, and a 573 check of Colonial for \$14,203.55 dated May 19, 1938. (Tr. 389) It would appear that these checks were transferred on the 19th. (Tr. 416)

The two checks of Max Levy to Goldman's firm resulted from a loan made by him to Miss Johnson and Kulp as individuals. (Tr. 388, 424-426) No note was given to Levy to evidence the transaction nor was he promised any lien upon the securities which were to be purchased.

The \$14,203.55 check of Colonial was charged off as follows:

Max Levy Special Account \$13,853.55

George Peterson Account 350.00 (Tr. 501, 503)

Between May 6, 1938, the date of the sale, and May 16, 1938, Darrow had agreed to purchase some of the bonds of the subsidiaries in Lot F from Miss Johnson for \$12,447.55. (Tr. 422) In pursuance of this agreement he delivered to her fifteen (15) checks of the trusts, the subsidiaries and the Chairman Account, totalling that amount, (Tr. 413-415) on May 18, 1938, (Tr. 402) with the understanding that he was to get delivery of the bonds within a short time. (Tr. 950) Such delays in delivery were fairly frequent occurrences in the bond transactions of Miss Johnson and Darrow. (Tr. 994, 2324-2326) and neither recalled any discussion pertaining to the reason for the delay in this case. (Tr. 950, 2325) On the 18th, the day Miss Johnson received them, those checks were deposited in Colonial's bank account. (Tr. 420)

On the next day, Colonial drew its check for \$14,203.55 charging the Max Levy Special Account and the George Peterson Account in the amounts indicated above. (Tr. 389, 391) The Colonial check was given to Goldman (Tr.

416) who in turn issued his check to Michael Tauber & Co. as described above.

Miss Johnson said her original plan to raise the \$25,000 contemplated a \$10,000 loan from Max Levy and a 574 \$15,000 loan (Tr. 408, 433) or possibly a \$25,000 loan from Baumann. (Tr. 2029) As it turned out, Baumann did not participate. (Tr. 1837, 1838) Miss Johnson testified that after the sale, but prior to the confirmation, she told Darrow "what I was going to do, and at that time he decided he ought to participate in that." (Tr. 408) According to Miss Johnson no arrangements of any kind were made with Darrow before the sale. (Tr. 407, 408) She testified that when Darrow asked from whom he was going to purchase she told him that Michael Tauber & Co. had purchased the securities at the sale on her behalf. (Tr. 410, 422, 423) At another point in the testimony, when directly asked whether Darrow inquired from whom he was purchasing the securities, Miss Johnson answered, "I told Mr. Darrow that I was issuing a check to Goldman, Allshouse & Healy for the balance of the cost of these securities, after deducting the money I had already sent to Mr. Goldman's office." (Tr. 412)

Darrow's testimony on this point is quite varied. He denied that Miss Johnson told him that Michael Tauber and Co. was purchasing for her. (984, 986, 2292) He said he had no idea that Miss Johnson was purchasing at the judicial sale. (Tr. 946) At other points in the hearing, however, he was not so positive. He testified that he did not know whether Miss Johnson was handling the securities for her own account or as an agent for someone else. (Tr. 947) He testified that he was not sure but thought he knew where Miss Johnson had acquired the securities. (Tr. 2323) Finally he testified that Miss Johnson's version of the transaction was accurate. (Tr. 2371-2373) He said he probably learned of the source of the bonds between the time he agreed to buy them and the time they were delivered—but said that this was a guess. (Tr. 2372, 2373) He said he did not discuss the matter with his attorneys prior to the purchase. (Tr. 2373)

575 Both Darrow and Miss Johnson, prior to the sale, had written lists of the securities that were to be offered at the sale. (Tr. 512, 941) From such a list he selected the bonds he wanted. (Tr. 941) He made a written memo of the bonds he was to get (Trustee's Exhibit of

Jan. 3, 1945) as he said it was his habit to do when delivery of securities purchased was deferred. (Tr. 990) The memorandum was dated May 16, 1938 (Tr. 992). It described the issuer of, the par value of, and the amount being paid for the bonds he agreed to purchase. The par value of the bonds totaled \$128,700. (SEC Ex. 21, Trustee's Ex. of Jan. 3, 1945) Thus with knowledge that his employee had arranged the transaction Darrow purchased 64+ % of the bonds (in terms of principal amount) in Lot I for 154%+ of the purchase price of the whole Lot I.

The testimony of Miss Johnson and that of Darrow are in agreement that he never asked her the price at which the securities were purchased by Michael Tauber and Co. at the sale. (Tr. 411, 423, 947, 948) She testified that she did not give him this information (Tr. 408) and he said that he did not recall reading anything about the sale. (Tr. 958) Although one of his attorneys, Williamson, attended the sale, Darrow testified that he did not instruct him to do so. (Tr. 945) He said that he did not check on the date of sale, the confirmation, or the price. (Tr. 946, 947) He was not interested in what Miss Johnson paid for the securities, (Tr. 948) and felt that it was not any of his business if his employees made a profit (Tr. 948) He said he first learned at the hearing that Lot I. was purchased for \$8050 (Tr. 954), admitting that he read only the first few pages of the Andrews Report. (Tr. 955, 956)

According to Miss Johnson the prices agreed on by herself and Darrow were set independently of the price Michael Tauber & Co. had paid. (Tr. 411) Darrow says that he referred to his record sheets to learn the prices at which the bonds were currently selling and set a 576 price around that figure, just as he would have done in any other instance where Miss Johnson offered him bonds.. (Tr. 2292) Miss Johnson said quite definitely that Darrow himself set the prices he would pay. (Tr. 409)

Miss Johnson testified at one point that the prices set were "about the prices at which the securities were selling or that we had paid for securities at that time." (Tr. 409) At another point she testified that the market value of the securities she sold Darrow was \$20,120. (Tr. 1804)—which would indicate that Darrow got a

great bargain. Goldman, however, was of the opinion that the whole of Lot I plus Lot II were not worth \$25,000. (Tr. 336)

In a meeting at the Continental Illinois National Bank and Trust Co., on May 19, 1938, (Tr. 420) at which, according to Goldman, (Tr. 220, 221) Master John F. Bolton, Mr. Biossat (who represented the plaintiffs), Richard Levy and another representative (Tr. 292) of Michael Tauber & Co., Miss Johnson and Goldman were present, the securities were delivered by Master John F. Bolton to Richard Levy. (Tr. 220, 221, 428, 429) At this time the securities were all in one lot. Levy then turned them over to Goldman in return for checks in the amount of \$16,503.55. (SEC Ex. 1; Tr. 220, 221, 428, 429) Goldman then separated the securities into Lots I and II, as they had been sold, (Tr. 429). He released Lot I to Miss Johnson and put Lot II in a safety deposit box in the bank vault. (Tr. 222)

After this meeting, Miss Johnson said she returned to the office, gave Darrow the securities he had paid for, (Tr. 398, 509, 510) and put the remainder in Colonial's safety deposit box. (Tr. 398) Thus, the bonds of Lot I not purchased by Darrow were retained by Colonial. (Tr. 730) It should be noted that Darrow never inquired as to the disposition of those securities which he did not purchase. (Tr. 510, 511)

577 The remainder of Lot I was disposed of as follows:

Certain of the bonds were sold and the proceeds used to repay the \$10,000 loan from Max Levy, (Tr. 437, 438) on which interest accrued at the bank rate (Tr. 425). In addition, Levy got a bonus of Station "F" bonds of the par value of \$6,000 which had a market value, according to Miss Johnson, of \$1,800. (Tr. 602; SEC Ex. 2) George Peterson received Crandon bonds of the par value of \$4,000 which had a market value which we can compute to be \$1,200 (SEC Ex. 2) as repayment of and a bonus for his \$350 loan. (Tr. 606; SEC Ex. 2) Others were sold by Colonial to its customers from whom some of these bonds were later purchased by Darrow (Tr. 732).

Excluding the \$6,000 of bonds given Max Levy, and excluding the \$4,000 of bonds given George Peterson, the securities in Lot I not purchased by Darrow totaled approximately \$60,300.00 in par value. These securities were sold for \$19,457.50. (SEC Ex. 2) Adding to this \$3,000,

the market value of the bonds given as bonuses, we find that the remaining bonds in Lot I in fact yielded to Colonial the sum of \$22,457.50. The total yield from all the bonds in Lot I was thus \$34,905.05.

As mentioned above, Lot II was retained by Goldman and put into a safety deposit box in the Continental Illinois National Bank and Trust Co.'s vaults (Tr. 230). The box was registered in Goldman's name (Tr. 230, 429).

At best, the position of Goldman throughout the entire series of transactions was never made very clear. He testified at different times that he did not know whether he represented anyone (Tr. 222), that he did not know who he represented (Tr. 225), and it was up to the court to determine who he represented (Tr. 264). He said he received no fees (Tr. 222) and steadfastly maintained that his actions were motivated only by a desire to prevent obstacles being cast in the path of reorganization of 578 the top trusts by seeing to it that the securities in Lot

II were kept in friendly hands. (Tr. 217, 220, 225, 227, 232) This desire arose, he said, from the fact that his firm represented many petitioning creditors of the trusts. (Tr. 222) It should also be noted that at this time Goldman represented two of the subsidiaries and in fact represented Darrow in litigation then pending. (Tr. 213, 214)

Goldman said that he did not know who the prospective purchaser was, but was assured that the securities of the top trusts would be left with him until such time as reorganization was feasible. (Tr. 225) In fulfillment of this agreement, he said, Lot II was retained by him and put into the safety deposit box. (Tr. 230) Miss Johnson said she allowed Goldman to keep the securities in his box because he was also interested in preventing them from getting into foreign hands. (Tr. 433)

In view of his testimony that the purchaser was unknown to him (Tr. 225), Goldman's notions pertaining to the ownership of the securities in the safety deposit box were the subject of considerable inquiry. He said that he claimed no interest in the securities personally (Tr. 223), but would surrender them only to such person as could establish ownership to his satisfaction (Tr. 227) When pressed as to whom he thought was entitled to vote the securities in a reorganization, he dodged the question

by answering that it was important not that the securities be voted for a favorable plan, but rather that they not be voted against such a plan. (Tr. 298, 299) He was also evasive when asked who he thought would be entitled to file claims based on the securities in reorganization proceedings. (Tr. 298) He said that while he did not know, it was his opinion that the securities belonged to the Baumann interests in New York. (Tr. 314)

From the evidence taken as a whole, the conclusion seems justified that whether or not Goldman knew who 579 financed the deal, and on that point there is some doubt (Tr. 226, 228, 229, 282, 301, 402) he must have been aware that Miss Johnson and Kulp were the real purchasers at the sale and the owners of the securities in his safety deposit box. On the stand, Goldman said that he was the only person who had access to the safety deposit box. (Tr. 272) Miss Johnson's testimony, however, disclosed that within a week after he received the securities, Goldman executed a power of attorney to Mrs. Hattie Kulp enabling her to enter the box. (Tr. 429, 431) Goldman's account of his relationship with the parties involved in the purchase must be regarded as beyond belief. Goldman knew Miss Johnson was employed by Darrow. (Tr. 277) It is probable that his general evasiveness and lack of truthfulness stemmed from his reluctance to disclose that he represented the trustee's employees in the matter of the purchase.

It would appear that Miss Johnson and probably Kulp, (the purchasers) and Goldman had similar ideas concerning the role of the Lot II securities in the reorganization of the trusts. (Tr. 218) Why, then, were the securities not kept in the possession of the owners? Why were they allowed to remain in a safety deposit box in Goldman's name, to which Mrs. Kulp had a power of attorney for access? The explanation may be discovered in Miss Johnson's testimony.

When asked who owned the Lot II securities Miss Johnson said that Baumann, Kulp and she were the owners. (Tr. 435) Questioned as to the manner in which Baumann acquired his interest she explained that she and Kulp had made an arrangement designed to assure repayment of a debt of \$50,000 owing from Kulp to Baumann and a debt on \$75,000—\$78,000 (Tr. 1827, 1829) owing from Kulp to Mrs. Baumann. (Tr. 1826, 1827)

In June of 1930 Baumann had loaned Jacob Kulp and Co. \$80,000 in cash, taking as collateral certain securities of the subsidiary corporations. (Tr. 1958, 1959)

This loan was personally guaranteed by Kulp. (Tr. 1960) In July of 1930, National Realty Trust was organized by Kulp and a few months later (Tr. 1966) there occurred an exchange by which Baumann surrendered the original collateral for a certificate representing 10,000 shares of beneficial interest in National, which certificate was endorsed by Kulp. (Tr. 1963) Only \$30,000 of the principal amount of the loan was repaid. (Tr. 1959, 1962) While Baumann still has the 10,000 shares of National (Tr. 1964, 1965, 1980), it appears that they are insufficient collateral for the remaining \$50,000 of the debt plus interest accrued and unpaid since 1932.

Mrs. Baumann in May 1930 turned over to Kulp \$75,000—\$78,000 of marketable securities which Kulp pledged with the New York Trust Co. as collateral for a loan of \$60,000. (Tr. 1828-1830, 1431, 1436) This loan was not repaid. (Tr. 1831) The collateral was sold but was insufficient to cover the amount of the loan. (Tr. 1831)

In order to assure repayment of these loans, Miss Johnson said (Tr. 1845) she and Kulp claimed only equal residuary interest in the Lot II securities, the claims of Mr. and Mrs. Baumann being given priority. (Tr. 1826, 1827) According to Miss Johnson, these unpaid loans created a great deal of dissension within the Kulp family. (Tr. 434) Evidently Mrs. Kulp felt more strongly about the debts than did Mr. Kulp. (Tr. 439) (It should be kept in mind that Mrs. Baumann was only a step-daughter of Kulp.) (Tr. 1437) It would seem that the mere fact that an arrangement had been made to give Baumann priority was not enough to satisfy her. Thus, Miss Johnson said the only reason that Mrs. Kulp was given a power of attorney for access was to assure that these loans would be repaid. (Tr. 435) Mrs. Kulp had the power, at any time, to remove all the securities from the box for the benefit of the Baumanns. (Tr. 435, 436)

581 Thus, it is clear not only why Goldman, rather than Miss Johnson or Kulp kept possession of the bonds, but also why Mrs. Kulp had the power of attorney for access.

In the reorganization of the trusts, Miss Johnson filed claims based on the Lot II securities, on behalf of Bau-

mann, Kulp and herself. (Tr. 1826) In the plan that was finally worked out these claims, according to Goldman, were subordinated to those of the holders of similar securities. (Tr. 222, 223)

582 C. Findings of Fact Relating to Placing
of Insurance by Jacob Kulp.

For over twenty years Jacob Kulp, dealing with the public as a broker, has written a full line of insurance through L. A. Rose & Co. (Tr. 549, 550) Prior to Darrow's trusteeship Kulp wrote all the insurance on the property of the subsidiaries, and no change occurred when Darrow took over. (Tr. 102, 103) Darrow said he merely told L. A. Rose & Co. to write renewal policies each year. (Tr. 2344) Thus, during the period of Darrow's trusteeship Kulp continued to receive commissions on the insurance covering the trusts' property. (See Trustee's Ex. 12 of 5/28/47)

Kulp received only the standard broker's commission on the insurance he wrote. (Tr. 549, 561; Trustee's Ex. 4) The policies he wrote were admittedly satisfactory and all losses were paid promptly. Kulp did much to reduce hazards which existed on the properties and thus effected substantial reductions in premiums and rates. (Tr. 565) Due largely to Kulp's good standing with L. A. Rose & Co., policies were kept in force when premiums were overdue. (Tr. 572, 573)

Kulp's name appeared on all the statements sent to the trusts by L. A. Rose & Co. (Tr. 102; see Trustee's Exs. 5 and 6) Darrow was at all times aware that Kulp was writing the insurance and receiving commissions. Darrow said that in the first meeting he had with his attorney, Robert McCormick Adams, Jacob Kulp and Miss Myrtle Johnson, Adams asked if Kulp wrote the insurance. Kulp stated that he had done so ever since the properties were built. Adams then asked, according to Darrow, what the commissions amounted to and Miss Johnson or Kulp stated that they ran about \$200 per month. (Tr. 2150, 2151) Miss Johnson and Kulp indicated that they could not work for Darrow unless allowed to continue this operation.

583 (Tr. 2339, 2340) This, said Darrow, was the only time he talked to Adams about the matter. (Tr. 2340)

Adams does not recall any such meeting as that of which Darrow spoke, and is sure that he did not know that Kulp

was receiving part of the premiums as commissions. (Tr. 2495-2498) In fact, he says, he never discussed the matter with anyone. (Tr. 2512)

Darrow testified also that he told Judge Holly that Kulp was to be permitted to retain the commissions on the insurance he wrote on the subsidiaries and that the Judge said that this arrangement was "all right." (Tr. 2379) He says he told the Judge that Kulp would not work for the trusts unless allowed to write this insurance. (Tr. 2380, 2381)

Kulp carried on his insurance activities, which appear to have included other than the trust properties, from the Colonial office until that office was given up. (Tr. 587) After that he operated from the office of Darrow. (Tr. 586) His testimony indicated he had no definite knowledge with respect to the payment of rent to Darrow for the use of the trusts' office and repeatedly stated Miss Johnson would know about the arrangement. (Tr. 588-590) During the period of Darrow's trusteeship Kulp collected \$16,148.83 in commissions from insurance written on trust properties. (Trustee's Ex. 12 of 5/28/47) Darrow stated that he never received any part of Kulp's commissions nor in any way personally profited from this arrangement. (Tr. 2153)

584 **D. Findings of Fact Pertaining to Quincy Station Post Office Building Corporation Dividend.**

During the period of its management, Jacob Kulp & Co. mingled its funds with those of the subsidiaries in its own bank accounts. In these bank accounts Jacob Kulp & Co. deposited its capital of \$100,000, \$90,000 borrowed from Baumann, \$60,000 borrowed from the New York Trust Co. on Mrs. Baumann's securities, the proceeds of other loans, commissions on insurance written, the income from those companies wholly owned by Jacob Kulp, and the proceeds of Jacob Kulp & Co.'s general securities dealings. (Tr. 1349, 1353, 1354, 1360, 1364-1366, 1376, 1425, 1430, 1433, 1434, 1592, 1602-1604) (SEC Ex. 22)

In this "jack pot" (Tr. 1478) bank account were also deposited the rentals of all but three of the subsidiaries. (Tr. 1360, 1430, 1431, 1434) Funds from the remaining three subsidiaries which had independent bank accounts, as required by their mortgage indentures, found their way into the common bank account by means of withdrawals

made by Kulp and Miss Johnson as officers of the subsidiaries, after the bonds covered by the indentures had been serviced. (Tr. 1380-1389, 1427-1429, 1442)

585 An elaborate set of books was kept by Jacob Kulp & Co. to record receipts and disbursements of these commingled funds. Each of the subsidiaries whose funds were mingled had its separate account and was given credit for its deposits in the form of accounts receivable against Jacob Kulp & Co. (Tr. 1360, 1365-1367) Bond issues floated by the subsidiaries were handled in the same manner,—Jacob Kulp & Co. took the bonds and credited the issuer (with an amount equal to par less the discount as an account receivable. (Tr. 1391, 1430, 1503, 1504, 1540-1546, 1524, 1525)

All the cash requirements and operating expenses of the subsidiaries were met out of these bank accounts. (Tr. 1364, 1365) Coupons were paid, and bonds were retired. (Tr. 1364, 1365) Buildings were constructed. (Tr. 1505) Management fees were charged against the credit balances of the subsidiaries after 1929. (Tr. 1378, 1435) On many occasions disbursements were made on behalf of subsidiaries in amounts larger than their current credit balances. These advancements were recorded as accounts receivable against the subsidiaries in favor of Jacob Kulp & Co. (Tr. 1376)

Similarly, out of these bank accounts all the operating expenses of Jacob Kulp & Co. were paid. (Tr. 1364, 1365) These disbursements were made regardless of the credit balance of Jacob Kulp & Co., the adjustments being made on the books by crediting various subsidiaries with accounts receivable. (Tr. 1376, 1377) Disbursements made to Kulp individually were credited as accounts receivable from him as an individual rather than from Jacob Kulp & Co. (Tr. 494) In this fashion there arose an account receivable by Quincy Station Post Office Building Corporation (hereinafter called Quincy) from Kulp in the amount of \$100,000.

Under the terms of the agreement by which Kulp in 1929 transferred to Federal the stock of the subsidiaries; including Quincy, Federal issued to him various of its 586 securities and assumed his obligations of \$206,178.23 to the subsidiaries (SEC Ex. 8), among which was this account receivable of \$100,000 due Quincy. In the agree-

ment the \$206,178.23 obligation is spoken of as one of Jacob Kulp individually, rather than of Jacob Kulp & Co. However, Miss Johnson testified that she did not believe the \$100,000 was owing by Kulp personally. (Tr. 497) Kulp testified in an extremely vague and confused manner to the effect that no debit was really owed Quincy since he had never claimed management or organization fees. (Tr. 609-620) It should be noted, however, that in the agreement between Federal and the subsidiaries, Kulp assumed personal liability as a guarantor for payment of the \$206,178.23. (SEC Ex. 8)

On November 22, 1930, the directors of Quincy, who were Miss Johnson, Jacob Kulp and his son, Lee Kulp, declared a dividend of \$100,000, payment being effected on January 2, 1931, by a book entry canceling the \$100,000 due from Federal which owned all the stock. (SEC Ex. 9) Thus, Kulp personally benefited from the dividend by being relieved to the extent of \$100,000 from his liability as a guarantor.

As trustee of Federal Darrow operated Quincy's business (Tr. 872) and continuously occupied the office of president and a position on the board of directors. (Tr. 863, 864) Shortly after his appointment Darrow, in the capacity of president, caused an audit of the corporation's books to be made by Scovell, Wellington & Co., certified public accountants. This audit, based on sound accounting theory, indicated that the corporation had at the time of declaration of the dividend a surplus of at most \$69,407.59 available for dividends. (SEC Ex. 10) Hence it was clear that the subsequent payment of this dividend resulted in an impairment of the corporation's capital to the extent of \$30,592.41. Upon learning that such 587 was the situation Darrow's attorneys filed a suit on behalf of the corporation, a companion representative proceedings on behalf of one Marie H. Boord, a creditor (SEC Ex. 14), and a petition in the reorganization proceedings on behalf of Quincy as debtor in possession seeking from Miss Johnson, Jacob Kulp and Lee Kulp, an accounting with respect to the illegally declared dividend.

For some time no effort was made to press these cases. Finally the point was reached at which it became necessary to determine once and for all whether these suits were to be prosecuted vigorously or to be dismissed.

(SEC Ex. 20) Darrow requested an opinion from his attorneys as to the wisdom of proceeding further with the cases. On February 3, 1938 he received a letter of opinion from Adams, Nelson and Williamson (SEC Ex. 20) which contains much information that should be noted.

In the minds of his attorneys, who did not take into consideration the financial condition of the defendants, there was some doubt as to the capacity of the corporation to be party plaintiff in these proceedings. There was another procedural difficulty in the representative suit arising from the fact that Mrs. Boord, the nominal plaintiff, had sold her bonds and did not know who the purchaser was. This development created the need for additional proper parties plaintiff in the representative suit. In conclusion the letter stated:

"In our opinion there is also about an even chance of making a recovery against Jacob Kulp, Lee H. Kulp and Myrtle Johnson. The defendants have indicated by their action to date that they will raise every possible technical defense, and a long arduous legal battle is to be anticipated. The case would undoubtedly be referred to a master in chancery who would probably require a deposit of \$500 to \$1000 for his costs before commencing his hearings. In addition to that expense we would be faced with the necessity of producing expert accountants to sustain our theory of the case, and this would cost you probably an additional \$500.

588 "Our firm would be willing to handle the case upon a semi-contingent basis. We would require a retainer of \$500 and a contingent fee contract calling for one-third of the amount collected. The \$500 retainer would be kept by us whether or not any recovery was made, but we would credit it against any contingent fee earned." (SEC Ex. 20)

It was suggested by his attorneys that Darrow investigate the financial responsibility of the defendants so that their ability to satisfy any judgment which might be rendered could be determined. (SEC Ex. 20) The entire extent of Darrow's investigation was the procurement of Hill's Reports on Miss Johnson, Jacob Kulp and Lee Kulp, (Tr. 891, 894), to which, as will be seen, he gave little weight. (Tr. 903) On June 7, 1938 Darrow reported

to the other members of the board of directors of Quincy, recommending that the suit be dismissed. Pursuant to this recommendation a resolution was adopted directing dismissal, and all proceedings were dismissed by agreement on June 20, 1938. The reasoning upon which Darrow's recommendation of dismissal was based may be observed by study of the transcript of his remarks contained in the minutes of the board meeting.

"You (the other members of the board) will remember that this suit grew out of the declaration of a dividend in 1930 amounting to \$100,000—payable by cancellation of an account of like amount from Jacob Kulp and not in cash. The claim is made in the suit that the Board had no right to pay this dividend because there was not sufficient earned surplus to legally declare it and Directors would be personally liable on this account.

"At the time the dividend was declared the books of the company showed a surplus in excess of \$100,000 as shown by an audit of Charles Banks & Company as of October 31, 1930. When I was made Trustee of the Federal Facilities Realty Trust, the owner of the stock of this corporation, I secured an audit by Scovill (sic), Wellington and Company, in which they stated the declaration of this dividend actually created a deficit of approximately \$32,000.00 in the earned surplus account.

589 "During the course of the reorganization, a demand was made by Mr. William Healy, attorney for the Bondholder's Protective Committee formed in St. Louis, Missouri, that a suit be started for this amount—\$100,000. I asked the Court for instructions and was advised to start it. No investigation was made of the merits of the suit.

"Since that time and since the completion of the reorganization, we have been advised by Mr. Healy that he would favor withdrawing the suit. Mr. Swannstrom, an attorney who represented Mr. Healy in Chicago made the statement to me he thought the suit was of questionable merit.

"You will remember this matter was brought up at our Board meeting in January, 1938, and the Board suggested I should get a letter from Mr. Williamson

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advising us what should be done and the probable cost of the suit and also get a report on the financial responsibility of the defendants.

"Unfortunately, Mr. Williamson did not give us a clear answer but I did get the information that it would cost us between \$1,000 and \$2,000, and if a recovery is made, we would only get two thirds of that.

"I asked Hill's Report, Inc., to make a statement of the individual financial responsibilities. Hill's are one of the best reporting agencies in Chicago. A copy of this report was mailed to each member of the Board. It really gave little information but the presumption was that a judgment might produce some money. This was largely inferred because of the possession by Jacob Kulp & Co., (the controlling stock of which was owned by Jacob Kulp) a few years ago of approximately \$200,000 bonds of the properties underlying the Federal Facilities Realty Trust and the National Realty Trust.

"I can understand this report probably better than the rest of the Board because of my close association with each of the defendants during the past three years.

"I know the bonds were in their possession and I know they were turned over to my predecessor George H. Andresen as Trustee for the benefit of the original owners. The major portion of the bonds were given to Jacob Kulp & Co. in exchange for securities of the two trusts before mentioned. The Department of Justice, several years ago after investigating the formation of these Trusts, asked that all of the assets of Jacob Kulp & Co. be turned over to Mr. Andresen for exchange back to the original owners as nearly as possible. As a result, Jacob Kulp & Co. had no assets and a bankruptcy petition was filed in 1933. When I succeeded Mr. Andresen in 1935, I expected to receive these securities but my attorney advised against it and Mr. Melvin Hawley was made trustee. Since the first
590 of this year these securities have been sold at auction by order of Court and the money received has been used for payment of legal fees and distribution to almost a million dollars of claims. The claimants will get probably one per cent of their claims.

"Naturally, Jacob Kulp and Myrtle Johnson do not want to tell one of the credit reporting agencies that they have nothing. They have organized the Colonial Securities Company to handle purchases and sales of securities for customers which is the business they have always been in but, of course, no money has been made by any one in the securities business for several years. They hope they can continue because we all hope some day this business will again make money.

"Lee H. Kulp, the son of Jacob Kulp, is connected with the Empire Cooler Company, I think as President. I do not think he has much money in it, but he is a good business man and has a good reputation. I think friends have put up the money to carry on the business, but he, like his father, does not like to say he has nothing but his salary.

"I urged Mr. Kulp a year ago to go through bankruptcy for I think he has no chance to pay his creditors. I have been told he has few obligations except those arising from the real estate collapse. As an individual, as well as on behalf of Jacob Kulp & Co., he guaranteed to repurchase thousands of dollars of real estate bonds and unless he does go through bankruptcy I think he will never be able to get on his feet financially. He owes these various corporations about \$40,000 on stock subscriptions and I know it will be a waste of money to sue for it. He is still optimistic and does not want to go through bankruptcy, but I am certain that he will do it if we prosecute this suit. I think he will be compelled to anyway.

"I believe Miss Johnson and Lee Kulp will also be forced into bankruptcy if we prosecute the suit because I think they do not have the money to hire a lawyer to defend it even though they have no liability and it will not hurt them individually any more to take bankruptcy than it will to have a suit of this kind tried.

"This Board of Directors must take the responsibility of pushing this suit or withdrawing it. No one else will do it. I do not like to spend several thousand dollars to fight a suit that is really an argument between accountants as to what constitutes surplus in a corporation and know if we do win it, we will be un-

able to collect any part of a judgment. On this account, I recommend the suit be withdrawn and that the necessary action be taken today before we act on Mr. Flaxman's resignation." (SEC Ex. 19)

591 Some of the reasons why Darrow thought the Hill's Report did not accurately reflect the financial situation of the defendants appear in his remarks to the Board. However, he did not satisfactorily indicate the sources of his knowledge. He says he never asked Miss Johnson or Kulp for a statement of their individual assets or liabilities, nor did he think he questioned them as to their financial responsibility. (Tr. 890) He said he had no need to ask for such information because in the several years he had been trustee he had learned the situation. (Tr. 890) Questioned further as to basis of his opinion that the defendants were judgment-proof he seemed to attribute his knowledge to some sort of mystic prescience; "Sometimes you can't explain things in words, although you know they are true." (Tr. 891)

It should be noted that a week prior to the Board meeting at which he recommended dismissal Darrow had purchased part of Lot I of the Seligman securities from Miss Johnson for \$12,447.50. Darrow would have been able to ascertain the financial situation of Colonial Securities had he desired to do so since its books were kept in his office. (Tr. 122) Had the relationship between himself and the defendants been different perhaps he might have investigated further. As he said "There was no animus in those suits. We were just as friendly as if they had not been filed." (Tr. 890)

It is, of course, impossible to say that had the suits been prosecuted they would have resulted in judgments against collectible defendants. It is, on the other hand, however, equally certain that Darrow's investigation as to the financial responsibility of the defendants was not sufficient.

On July 20, 1938 the District Court, on petition of Darrow as president of Quincy, ratified his act in dismissing the two lawsuits and dismissed his petition in the reorganization proceedings.

592 E. Findings of Fact In re. Accounts Receivable Sold by Maurice Klein, Trustee in Bankruptcy, in Liquidation of Jacob Kulp & Co.

As set out in detail *supra* (p. 37-44) Jacob Kulp & Co.

during its period of management commingled its funds with the funds of the subsidiaries in its own bank accounts. Advancements made to the weaker subsidiaries in excess of collections were considered accounts receivable due Jacob Kulp & Co. The moneys of the subsidiaries deposited in the Jacob Kulp & Co. bank accounts were reflected as accounts payable on its books, but the amounts due the subsidiaries from Jacob Kulp & Co. almost always exceeded by substantial sums the total bank balances of Kulp & Co. Hence the advancement made to the weaker subsidiaries in excess of collections which were considered accounts receivable due Jacob Kulp, & Co. were in reality funds diverted from the more prosperous subsidiaries. (SEC Exs. 22 and 23)

On October 31, 1936, (Tr. 1170) Maurice Klein, the trustee in bankruptcy of Jacob Kulp & Co., sold to Michael Tauber & Co., which was acting on behalf of Miss Johnson (Tr. 1202, 1203) the assets of the bankrupt for \$1,500. (Tr. Ex. 1 of Apr. 10, 1946; Tr. 1205, 1241, 1257, 1258) Included in the assets so purchased were miscellaneous securities, certain interest coupons, the books and records of the bankrupt, and accounts receivable from the trusts, their subsidiaries, and one other Kulp-conceived corporation, in amounts totaling \$172,436.47. (Tr. Ex. 1 of Apr. 10, 1946; see also Tr. Exs. 3, 3A, 3B and 3C of April 10, 1946; Tr. 1146-1164) It does not appear that the books and records were specifically included in the trustee's sale but all parties to the transaction seem to have considered them as passing thereby.

Prior to the sale Miss Johnson and Jacob Kulp discussed with Joseph Baumann the fact that the sale was to take place. (Tr. 1169, 1170, 1994, 1995) and convinced 1993 him that the acquisition by him of the accounts receivable would provide additional protection for the loans made by him and his wife to Kulp. (Tr. 1208, 1995-1999, 2004-2011, 2059-2064) Miss Johnson arranged to be his agent insofar as the purchase of the accounts receivable was concerned. (Tr. 1169, 1182, 1207, 1208) Her motives do not appear to have been wholly altruistic, however, for she and Jacob Kulp wanted the accounts receivable in "friendly" hands which would facilitate what they conceived to be a proper reorganization of the subsidiaries and of the trusts. (Tr. 1175, 1199, 1200, 1878-1880) It

should be noted also that they appear to have had an understanding with Baumann that the accounts receivable would be turned back to them upon repayment of the loans on which Kulp was obligated. (Tr. 1201, 1880)

The cost of the accounts receivable to Baumann, according to their agreement, was to be the difference between the total purchase price of all the assets and the amount for which Miss Johnson could dispose of the other assets purchased. (Tr. 1183, 1203) Through the attorney for Jacob Kulp & Co., Mr. Lowenthal, Miss Johnson arranged the details of the purchase with Michael Tauber & Co. (Tr. 1144, 1145, 1173, 1174) A bid up to \$10,000 was authorized. (Tr. 1176, 1206, 1210) Although Miss Johnson said that she spoke with Darrow concerning these matters before the sale (Tr. 1172), and that she discussed the fact that Tauber was acting on her behalf, Darrow says that he is not sure whether he knew of this or not. (1290, 1295)

Soon after the purchase by Michael Tauber & Co. and before there was any transfer of the assets to Miss Johnson (Tr. 1170), Darrow agreed to purchase the books and records and certain coupons for \$750. (Tr. 1178) He said he was not interested in purchasing the rest of the 594 claims against the trusts and subsidiaries mainly because he did not have sufficient funds to do so. (Tr. 1293) He testified that he set the price of \$750 for the assets he purchased (Tr. 1289), although he said he would have gone as high as \$1,000 since the books were essential to his operation of the trusts. (Tr. 1114, 1172, 1173, 1207, 1289, 1290, 1299-1302) After petitioning for and receiving the permission of the Court to make the purchase (Tr. 1058, 1059, 1113, 1114) Darrow gave Miss Johnson two checks of the trust totaling \$750 which were made payable to Michael Tauber & Co. (Tr. 1135, 1136, 1231, 1232) She gave these checks to Lowenthal along with her own check (Tr. 1179) for \$800 (Tr. Ex. 4 of Apr. 10, 1946), she having received no advance from Baumann. (Tr. 1182) Lowenthal delivered the checks to Michael Tauber & Co. (Tr. 1180) and received the miscellaneous securities and accounts receivable, and turned them over to Miss Johnson. (Tr. 1145) The only tangible things Darrow received were the coupons (Tr. Ex. 2A of Apr. 10, 1946). The books and records were already in his office (Tr. 1180). As is evident, Michael Tauber & Co. received a commission of \$50 for making the purchase on Miss Johnson's behalf (Tr. 1205).

Miss Johnson disposed of the miscellaneous securities for \$350 or \$400 (Tr. 1164, 1165, 1183) selling some to the trusts, the subsidiaries and the Chairman Account (Tr. 1166, 1167). She next assigned the accounts receivable to Baumann who contributed \$400 or \$450 in accordance with their understanding. (Tr. 1164, 1165, 1183, 1192)

Darrow had many discussions with Attorney Williamson regarding the Jacob Kulp & Co. bankruptcy (Tr. 1112) and had knowledge of the nature and origin of the accounts receivable which constituted part of the assets (Tr. 1907).

He testified that he thought the accounts receivable 595 were worthless (Tr. 1114) but did have a nuisance value. (Tr. 1317) He said he was not interested in who bought them. (Tr. 1115, 1116) Having this opinion of these accounts Darrow by his attorney filed an intervening petition in the bankruptcy court to have them set off, (Tr. Ex. 14) on the ground that they were improper results of commingling of funds by Jacob Kulp & Co. (Tr. 1278-1283) For reasons which were never brought out in the testimony the petition was voluntarily withdrawn. Darrow said only that the whole matter was handled by his attorney (Tr. 1324-1329). At this time Darrow knew that Baumann owned the accounts receivable, having gained this information about a month after the sale. (Tr. 1064)

It is clear from the fact that the petition was filed that Darrow was aware that the allowance of such claims would reduce the equity of the trusts in the subsidiaries. Thus, Darrow cancelled the coupons he purchased since they, too, had been acquired by Jacob Kulp & Co. with commingled funds. (Tr. 1211-1227) However, while trustee and president of each subsidiary, Darrow permitted the allowance of accounts receivable totaling \$81,311.34 in the reorganization plans of six of the subsidiaries in 77B proceedings. (SEC Ex. 24, 24A, 25, 25A, 26 & 27) Although Miss Johnson said she thought a blanket claim had been filed by Baumann on all obligations of the companies held by him (Tr. 1163, 1164), it appears that many of the accounts receivable were allowed and set up without any claims ever having been filed for them (SEC Ex. 24, 24A, 25, 25A, 26, 27) The accounts receivable were allowed and set up in the various reorganization plans for the following amounts:

Ferry Station Post Office, Inc.	\$34,864.21
Irving Park Post Office Building Corp.	4,375.36

	McKinley Park Station Building Corp.	6,402.05
	Berwyn Post Office Building Corp.	2,995.00
596	Los Angeles Service Station Inc.	2,145.04
	Postal Facilities, Inc.	30,529.68

Darrow says that he used his own judgment in determining the validity of all claims. (Tr. 1317) It should be noted, however, that Miss Johnson participated in most, if not all, of these reorganizations. (Tr. 1147-1164) At this time it appears that she and Kulp, by virtue of an understanding with Baumann, had an interest in the accounts receivable, for they were to share in them, when and if Baumann's loans were repaid. (Tr. 1201, 1880)

F. Findings of Fact In re. Physical Setup of Offices, Telephone and Sharing of Help.

When Andresen, Darrow's predecessor, was appointed trustee he took over the office which had previously been occupied by Jacob Kulp & Co. in a suite with Colonial Securities Co. at 29 South LaSalle Street (Tr. 83, 84). Presumably some sort of division of rental expense was arranged. (Tr. 84) When Darrow was appointed trustee he continued to occupy these quarters. (Tr. 34)

In 1936 Darrow moved the offices of the trusts to 100 West Monroe Street where he remained until he resigned in August 1943. (Tr. 46) At the time he agreed that Colonial might share this office space with the trusts (Tr. 920). Physically, the suite seems to have been divided into two sections separated by a wall which was broken by an opening about the size of a doorway. (Tr. 47, 920) Darrow and the trust occupied about 60% of the space and Colonial about 40% (Tr. 49, 98, 99). Each had a separate lease (Tr. 48, 1642). There were two entrances to the suite—Room 1807 bore the names of Darrow and the trusts, Room 1811 bore Colonial's name (Tr. 73). Miss Johnson occupied an office in the trusts' part of the suite directly next to 597 that of Darrow. (Tr. 40, 41, 73, 122) Kulp had his office in Colonial's part of the suite. (Tr. 46)

Colonial's lease ran out early in 1940 (Tr. 129). Because it had been in the process of liquidation for some time (Tr. 36, 100-102) it did not renew it. However, the firm was allowed to remain in the office until a new tenant was secured some months later in April 1941 (Tr. 48, 444, 445). Previous to that time Colonial's use of its office had gradually diminished until only Kulp was using it, and he only

for a few hours a day (Tr. 76, 77). After the space was relinquished by Colonial part of its furniture was moved into Darrow's offices (Tr. 122), as were its books and records (Tr. 123) Kulp moved his desk into the trusts' office (Tr. 47, 48). In January 1943 the opening between the two parts of the suite was permanently walled up (Tr. 444). There is no significant testimony as to whether Colonial or Kulp paid any rent to the trusts for the use of their office space.

For about 20 years the telephone number of Jacob Kulp & Co. was Dearborn 8666 (Tr. 594). When that company ceased its activities Colonial took over the number (Tr. 40, 41). This telephone was used jointly by the trusts during the period they shared offices with Colonial (Tr. 926, 927). Since Colonial was the subscriber all bills were payable in its name, but an arrangement was made whereby costs were apportioned on the basis of the number of telephones used by Colonial and the trusts (Tr. 162). Toll charges, of course, were treated separately (Tr. 162, 163). Darrow and Miss Johnson worked out the details of allocation (Tr. 927), and the trusts and Colonial each issued their own checks for their respective shares of the bill (Tr. 51, 130).

This method of allocation continued only so long as Colonial had substantial requirements (Tr. 132, 133). After 1940, however, Colonial had little but a few long distance and toll calls so that basis was abandoned (Tr. 132, 598 133), and Darrow paid all bills except such items as could be individually allocated (Tr. 1512, 1513). According to Darrow's accountant, Marquiss, the allocation was, in his opinion, fair and proper (Tr. 200, 202).

The larger part of the testimony regarding work done for Colonial by Darrow's employees comes from Marquiss, who was Darrow's accountant from 1935 to 1943 (Tr. 67). He said that Colonial did not have a stenographer after 1936 and that Darrow's stenographer handled Colonial's work. (Tr. 66, 120 121) He further testified that Darrow's cashier performed services for Colonial (Tr. 118, 135, 136) as she had done when she was employed by Darrow's predecessor, Andresen (Tr. 135, 136).

The arrangement was not completely one-sided for Colonial's employees did some work for Darrow. Its messenger boy ran errands, made bank deposits, did mimeograph work and some work in connection with certain mailings for Darrow (Tr. 128, 166-168). Colonial's stenographer,

according to Miss Johnson, did a great deal of work for the trusts when Darrow first became trustee and had considerable mailing work (Tr. 1643). Miss Johnson stated that "we felt that one sort of balanced the other." (Tr. 1644). The record seems to uphold her views upon this 599 subject.

G. Findings of Fact in Re. History and Transactions of Chairman Account.

When Andresen became trustee he was confronted with the problem of the bank accounts of Jacob Kulp & Co. in which had been commingled the funds of the subsidiaries. (*Supra*; Tr. p. 209) For a period he maintained the same type of operation. (Tr. 209) In 1934, however, he froze the debit and credit balances and opened separate bank accounts for each of the subsidiaries. (Tr. 207) In other words, Andresen maintained the Jacob Kulp & Co. "fiscal agency" accounts as a separate operating unit (which Darrow later named the "Paul E. Darrow, Chairman, Account") (Tr. 209) and started afresh with the subsidiaries. At this time there were moneys and securities in the Chairman Account but no distribution was made. (Tr. 209)

By means of accounting methods earlier explained Jacob Kulp & Co. had become a creditor of certain of the subsidiaries, and of the trusts as well. (Tr. 208-210) Other subsidiaries, however, were creditors of Jacob Kulp & Co. (Tr. 210) After the "freeze", therefore, various subsidiaries and the trusts assumed the status of debtors of the Chairman Account. After Darrow became permanent trustee control of the Chairman Account was transferred to him by an order of this Honorable Court upon a petition filed by Darrow. (Tr. 210)

This unusual situation of a trustee of a debtor having complete control of a creditor was made more complex by the fact that, as trustee, Darrow had a beneficial interest in the Account insofar as the trusts were holders of the equity ownership of the subsidiary corporations which had claims against that account. (Tr. 210, 211) Marquiss quite aptly described this situation as "wheels within wheels." (Tr. 211)

600 At one point in the testimony it appeared that there was a shortage of \$21,200 face amount of bonds in the Chairman Account (Tr. 850, 856). Examination of Darrow's Final Reports and Accounts (Federal, Ex. E. p. 1;

National Ex. F, p. 1) indicates that a miscalculation was made and the amount of the apparent shortage should be reduced to \$20,600. This matter was entirely cleared up, however, when it was pointed out that in the two distributions made by Darrow out of the Chairman Account he gave \$20,600 face amount of bonds to the subsidiaries having interests therein (Tr. 1086, 1087). Darrow said that this was done in order to allow a larger distribution than would otherwise have been possible and to help the individual corporations to get their bonds retired (Tr. 1086).

There is no testimony relevant to the specific objections made by John W. Guild, Successor under Mortgage Indenture with respect to Darrow's handling of the Chairman Account which includes matters considered by the Andrews Report. Perhaps the most serious omission discovered in Darrow's report of the operations of the Chairman Account related to his acquisition of \$84,000 of Federal bonds.

On November 24, 1933, Jacob Kulp & Co. executed a note in the amount of \$27,300, payable 30 days after date to the order of the Foreman-State National Bank. The note was guaranteed by Jacob Kulp individually, and as collateral the payee held (a) certain bonds of the subsidiaries with a total par value of \$33,000, (b) bonds of Federal with a total par value of \$84,000, and (c) a non-negotiable receipt of the National City Bank of Cleveland, depository under reorganization proceedings of the United States Parcel

Post Building Co. (Resp. Ex. 5) On November 5, 1936, 601 the First National Bank of Chicago (hereinafter called the bank), as successor to the Foreman-State National Bank, agreed to sell the note which had been reduced by partial principal payments to \$9,554.68, plus 7% interest from September 30, 1934, and the collateral to Colonial for \$12,000. (Resp. Ex. 5)

According to Miss Johnson, who made all the arrangements for the purchase, Colonial originally intended to sell the collateral securities at retail once they were acquired. (Tr. 1707) After discussing the proposed purchase with Darrow, however, these plans were greatly altered. Miss Johnson testified that Darrow did not want to have the securities sold to the public and expressed an interest in acquiring them in order to protect the holders of the certificates of beneficial interest in Federal. (Tr. 1708) The \$84,000 block of bonds, together with the block of \$286,000 held by Hawley under the trust which was being liquidated

in the *Seligman v. Kuhn* proceedings about equalled the amount held by the public. (Tr. 1708, 1709)

Darrow, according to Miss Johnson, indicated that he wanted to work out some arrangement whereby he could acquire the bonds (Tr. 1709). He did not have sufficient funds to make an out-right purchase of the note and the securities held as collateral (Tr. 1618, 1709). She told him that she could arrange a satisfactory deal with the Bank whereby the payments and the transfer of the securities could be spread over a period of time (Tr. 1709). Darrow was agreeable to this type of arrangement. As a consequence Miss Johnson, apparently acting on behalf of Colonial, arranged the purchase for a price of \$12,000, payable on or before March 5, 1937. (Resp. Ex. 5) Prior to that date Darrow drew checks upon the Chairman Account, National, Federal and one of the subsidiaries payable to Colonial totaling \$12,000-Colonial then drew 602 its checks payable to the Bank, received the various groups of securities and turned them over to Darrow. (Supplemental Affidavit of Dec. 9, 1943 Tr. 1698-1705)

One important feature of the Darrow-Colonial transaction must be sharply borne in mind-whereas Colonial agreed to purchase the notes and all the securities from the Bank for \$12,000, Darrow purchased only the bonds of the subsidiaries for \$12,000. Both Marquiss and Miss Johnson's testimony confirm this (Tr. 1582, 1710). The \$84,000 block of Federal bonds was "given" to Darrow by Miss Johnson, acting on behalf of Colonial, to "hold" for the benefit of the holders of certificates of beneficial interest of Federal (Tr. 1709, 1710). As a result, this block of bonds was considered by Darrow as having been acquired at no cost (Tr. 1678). It was put in a safety deposit box in the First National Bank of Chicago (Tr. 1716).

No mention of this block of bonds was made in Darrow's Final Reports and Accounts, nor in the Detailed Schedules accompanying (Tr. 1577-1582). However, on December 9, 1943, Darrow had filed affidavits supplemental to his Final Reports and Accounts which were dated November 17, 1943, and which set out in detail the facts regarding the acquisition of these bonds. The affidavits stated "These bonds are in his (Darrow's) possession and were received free of cost. Their disposition seems to be a matter for the direction of the Court. His intention has been eventual-

ly to deliver them to the Federal Facilities Realty Trust for cancellation."

No such delivery was ever made and at the hearing on July 11, 1946 it was discovered that these bonds were still in Darrow's possession, never having been turned over to the successor trustee.

In a discussion which, as is indicated at page 1586 of the transcript, was stricken from the record I expressed my surprise at Darrow's retention of the bonds for so long, when he was bound by court order to turn over to his successor, Mr. Mosser, all trust property which came into his possession. I suggested that arrangements be made to effect a transfer of these bonds to Mosser without resort to a petition and formal court proceedings. Mr. Herriott, counsel for Darrow, promptly effected such a voluntary transfer and deserves the thanks of the Court for his cooperation.

Part of the \$33,000 of bonds of the subsidiaries which Darrow acquired by purchase were retained by the Chairman Account and others were sold to various individuals (Tr. 1676, 1677). Miss Johnson testified that the securities purchased from the Bank by Colonial were worth more than \$12,000 at the time (Tr. 1711). On July 15, 1946, Miss Johnson testified that the bonds of the subsidiaries which Darrow purchased were currently worth about \$20,000 and that the \$84,000 par value Federal bonds were worth about twenty cents on the dollar (about \$17,000) (Tr. 1712, 1713). She said that she thought the Federal bonds will be worth par upon completion of the Federal reorganization (Tr. 1713).

H. Findings of Fact in Re. Records, Reports and Accounts of the Trustee.

1. Current Records.

Marquiss kept books for Darrow as trustee (Tr. 1529, 2234). Darrow himself kept extensive personal records of the transactions of the trusts and all the subsidiaries but not of the Chairman Account (Tr. 2234, 2235, 2252). He used sheets which reflected the income, different classes of expenditures for each month, cash on hand, money in sinking funds, bonds outstanding, bonds purchased, summaries of the reorganization plans, and the prices at which potential sellers were offering bonds. (Resp. Exs. 2, 2A-L of 604 Mar. 18, 1947; Tr. 2235) These sheets were devised by

Darrow especially for his own use, and he personally obtained the information on them from the books of the trusts and their subsidiaries (Tr. 2235 to 2238, 2283, 2284), with the exception, of course, of the asking prices of potential sellers which he obtained from letters and phone calls (Tr. 2238, 2318). Darrow kept these records in his desk and referred to them several times a day (Tr. 2254). Often they were referred to rather than the books because it was easier to get information from them (Tr. 2261),

In addition to these records Darrow kept his own comparative statements of income and expense for many of the subsidiaries. (Resp. Exs. 1, 2 & 3 of Mar. 28, 1947; Tr. 2266 to 2270). These, too, were referred to frequently. (Tr. 2275). Another type of information sheet was prepared by Darrow to mail to the Boards of Directors or trust committees of the various subsidiaries. These sheets, which were sent out monthly, indicated the financial situation of each subsidiary. (Resp. Exs. 4, 5, & 6 of Mar. 28, 1947; Tr. 2276).

2. Final Reports and Accounts.

Darrow's accountant, Marquiss, prepared the Final Accounts and Reports and the Detailed Schedules accompanying. (Tr. 1529 to 1531) Darrow said that although he had not checked every item in the Reports and Schedules filed, he was satisfied that they were correct except, perhaps, for minor errors (Tr. 814 to 817, 1076, 1077).

A number of comparatively minor discrepancies and omissions in the Final Reports and Accounts and the Supplementary Detailed Schedules were the subject of considerable testimony. I do not feel that it is necessary to make detailed findings of fact pertaining to each matter. Rather, I shall briefly indicate the nature of each discrepancy or omission and characterize the testimony with respect thereto.

I. In the case of Federal, Darrow's Final Account as supplemented indicated that he had received a sum of money which was \$2,412.02 less than the amount his Detailed Schedules stated that he had received. In the case of National, there was a similar discrepancy, however, the amount involved was \$2,065. In each case the variance was satisfactorily explained by testimony (Tr. 805, 806, 812, 813, 814, 1073 to 1079, 1530, 1551 to 1554, 1564 to 1569, 1573 to 1576).

II. The Final Report and Account as supplemented in the case of Federal states that a total of \$980 was received as interest on certain United States Building Corporation second mortgage bonds held by the Trustee. However, when the figures listed are added they total \$1080. This \$100 discrepancy resulted from a typographical error in the preparation of the Report (Tr. 807 to 810, 1084, 1556 to 1558).

III. In seven different instances in the Final Report and Account as supplemented, the purchase price of one bond is matched with the selling price of another in order to determine the amount of profit on a given transaction. Darrow and Miss Johnson testified that bonds were sometimes exchanged for the accommodation of bondholders who desired different denominations. However, in five of the seven instances bonds of different serial numbers only were matched—the denominations being the same. Darrow did not keep any record of bond exchanges so that it is impossible to check the accuracy of the determination of profit as shown in the Detailed Schedules. (Tr. 653 to 657, 809, 810, 1089 to 1092, 1558 to 1560).

IV. The Final Accounts and Reports in both cases indicate that interest was paid regularly on the bonds of certain subsidiaries held by the trusts. In the Detailed Schedules, however, there are omissions of certain interest items with respect to these subsidiaries. Marquiss testified that the characterization of interest items as "Interest Earned" was inaccurate since the interest account was kept on a cash basis rather than an accrual basis. To this extent the Detailed Schedules are confused with regard to interest items. There was little testimony on this point since Darrow introduced no evidence in support of his position that all interest received on these bonds has been reported. Some interest which accrued during Darrow's administration has since been collected by the Successor-Trustee (Tr. 1531 to 1544).

V. Darrow made loans of trust funds to Federal subsidiaries totaling \$35,610 and to National subsidiaries in the amount of \$76,013.50. At the date of his resignation there remained owing to Federal \$4,020 and to National \$6,500. None of these loans were specifically authorized by order of the Court. Darrow said

that he construed his appointment to give him such authority. Since the filing of the Final Account all of these obligations have been fully repaid to the Successor-Trustee (Tr. 810, 811, 857 to 861, 1561 to 1564).

VI. Darrow's Final Account in the case of Federal shows "Miscellaneous Expense" as \$1,421.05, while the Detailed Schedules show it as \$1,413.10. In the case of National, the Final Account shows "Miscellaneous Expense" as \$1,688.12. In neither case is there any testimony in the record as to the specific nature of the expenses, nor in the case of Federal is there any explanation of the apparent discrepancy.

VII. Shortly after Darrow was appointed Trustee he was elected President of all the subsidiary corporations. As such he managed and operated the subsidiaries for which he received certain fees. These fees were by him turned over to the trusts up until the time he resigned (Tr. 929, 930). In several reorganization agreements Darrow was paid fees for his services, which fees were retained by him (Tr. 972, 973). There is not sufficient evidence on this point, however, to justify a conclusion that improper conduct occurred in this respect.

3. Reports to the Court.

During the eight and one-third years of Darrow's trusteeship he filed no reports of his administration of Federal and only one of his administration of National.

I. Findings of Fact in Re. Discussions Had Between Darrow and the Securities & Exchange Commission.

Early in June 1943 (Tr. 2423, 2435, 2475) Thomas B. Hart, Regional Director of the Chicago Office of the Securities and Exchange Commission requested that Darrow confer with him regarding the filing of petitions to remove him as trustee of the trusts (Tr. 2479). Hart stated that his office had prepared and was ready to file such petitions and awaited only authorization from the Commission (Tr.

2476, 2479). He said that he wanted to advise Darrow of this fact (Tr. 2479). Darrow conferred alone with Hart and Roberson (Tr. 2423, 2425, 2475). Although Darrow had known that an order had been entered directing Frederick B. Andrews, an accountant to investigate the two trusts, he said that he first learned that there was

some complaint about his administration of the estates when Hart called him to this conference (Tr. 2446).

There is considerable variance in the testimony with regard to what was said by Hart on this occasion. Darrow's version of the conference is best told in his own words. Speaking of Hart, Darrow said:

"He said that I had been allowing Miss Johnson and Mr. Kulp to trade in securities and make a profit and that I would have to resign as trustee and if I did not resign as trustee, they would start action to remove me as trustee and he said 'You know all the publicity you will get if we start after you and it will embarrass Judge Holly and you will get more newspaper publicity because of your father' and he said 'While we haven't anything on you that doesn't mean we won't get something on you and if we have to attack you you will probably have to pay the profits that they (Miss Johnson and Mr. Kulp) made on securities and insurance and you will probably get all kinds of publicity and the best thing for you to do is resign. If you want to discharge Mr. Kulp and Miss Johnson we will be perfectly satisfied to have you remain as trustee, but you must discharge them' He said further that he wanted a suit started against Miss Johnson and Mr. Kulp for recovery, which I agreed to start and I said if they didn't want my lawyer to handle it they could appoint some lawyer they wanted to sue in my name and that I had no objections to a suit but that so long as I remained I would keep Miss Johnson and Mr. Kulp because I couldn't run the business satisfactorily for the benefit of the bondholders without their help. He gave me a certain deadline to decide on....." (Tr. 2423, 2424)

Hart's version of the conference is markedly different. He denied ever having made the statements attributed to him by Darrow. (Tr. 2478) He specifically stated that he never told Darrow that the SEC had nothing on him but would get something (Tr. 2477). Nor, he said, did he tell him that no petition would be filed if Johnson and Kulp were discharged (Tr. 2477, 2478). He also denied that the SEC wanted a trustee who would sue Miss Johnson and Kulp. (Tr. 2485) He said he told Darrow that "the action was not to be construed as a threat but as something we would do after authorization by the Commission." (Tr. 2476) His own version of what he told Darrow is as follows:

"I said the results of the investigation and report that had been made by Mr. Andrews and the independent investigation and checking up by the Securities and Exchange Commission and by one of our accountants would indicate that certain of the employees were trading in the securities of the trusts and it indicated that they were probably trading at a profit to themselves. I said they were under his supervision and control. I stated, I think that Mr. Darrow had been in as trustee for eight years, and there were no 67 reports filed. There was no report in one case at all, and there was no interim report in the other, and I pointed out there was no indication of a plan being filed, and that, together with the trading by the employees warranted the action the Commission was contemplating taking. (Tr. 2480, 2481)

According to Hart, most of the conference, which lasted only about twenty-five minutes (Tr. 2491) was spent discussing the contents of the petitions (Tr. 2482). He said that Darrow did not comment on the facts set out in the petitions (Tr. 2485).

610 Both Hart and Darrow steadfastly maintained that their respective versions of what was said at the conference were accurate. Subsequent to this conference, Adams representing Darrow, conferred with Hart (Tr. 2489, 2504, 2505). Adams said that Hart made no statements to him to the effect that no proceedings to remove Darrow would be instituted if Miss Johnson and Kulp were discharged (Tr. 2490). Nor did he ever hear Hart say that the SEC had nothing on Darrow but would get something on him (Tr. 2490). Adams, did say, however, that Darrow told him that if he (Darrow) were to discharge Miss Johnson and Kulp he felt that the petitions would not be filed (Tr. 2490). He said Darrow had a "deep feeling" that this was the case (Tr. 2505, 2507). But Adams twice testified that Darrow never told him on what information he based this opinion or feeling (Tr. 2490, 2491, 2506).

I am reluctant to believe that Hart threatened Darrow and place no credence in Darrow's version of the statements attributed to Hart, namely, that the SEC would be satisfied to have him remain as trustee if he discharged Miss Johnson and Kulp.

There is further conflict in the testimony concerning Darrow's retention of Attorney John Kelley of New York City to represent him before the SEC in Philadelphia (Tr. 2435, 2436). Darrow said that he retained Kelley because Adams had said that he was "not the proper person to see the SEC with me" (Tr. 2443). Adams vigorously denies ever having made such a statement (Tr. 2503). In any event, without getting the Court's permission to consult other counsel, Darrow retained Kelley with his own funds (2437, 2444).

Darrow and Kelley had several conferences with members of the SEC in Philadelphia regarding plans of reorganization (Tr. 2438, 2439, 2441). During these conferences the matter of filing of petitions seeking Darrow's removal were discussed. Kelley was attempting to work out some kind of arrangement whereby the petitions would not be filed. (Tr. 2439, Resp, Exs. 1 & 2 of May 5, 1947) It would appear that he failed.

During the last part of July and the first part of August there was a serious problem as to whether Darrow should resign or contest the petitions (Tr. 2506). Early in August Kelley recommended that Miss Johnson and Kulp be dismissed. Why he recommended this and whether he felt that Darrow would gain some advantage from this step is not brought out by the testimony. Darrow would not discharge Miss Johnson and Kulp because he felt their services were necessary to him (Tr. 2424, 2506) in administering the trusts. In August Roberson told Adams that the petitions were about to be filed (Tr. 2483). Subsequently Darrow phoned Roberson and said that he would resign. He indicated a desire to submit his resignation to Judge Holly who, at the time, was out of town and requested that the petitions be withheld until the Judge's return. The SEC complied with this request (Tr. 2484).

J. Findings of Fact in Re. Explanations and Contentions of the Respondent.

1. Personal Loans.

On two occasions the trusts were offered bonds of the subsidiaries at attractive prices but did not have sufficient funds to take advantage of the opportunities (Tr. 2168). In order that the trusts might gain the benefit of the acquisitions (Tr. 2168) Darrow made personal loans, purchased the bonds on his own account and sold them to the trusts

at the same prices he had paid. The mechanics of these transactions were worked out as follows: Darrow borrowed money from the First National Bank on his own col-612 lateral and purchased the bonds in his own name. As they acquired funds to do so the trusts purchased bonds from Darrow at the same price he had paid (Tr. 21-74). The checks drawn by the trusts payable to Darrow were by him endorsed over to the Bank and applied to the principal of the loans (Tr. 2204). During the period in which Darrow held the bonds all interest collected was turned over to the trusts (Tr. 2183, 2184) and all interest accruing on his loan was paid by the trusts. (Tr. 2204)

On October 29, 1935, Darrow pledged \$3,000 of New York Railways Corporation 6% bonds owned by him as security for a loan of \$2,025. (Resp. Ex. 1 of Mar. 5, 1947; Tr. 2169). With these funds he purchased \$5,000 par value of Quincy Station Post Office Building Corporation second mortgage bonds and \$5,000 par value of 22nd Street Station Building Corporation first mortgage bonds on the same day (Tr. 2167-2170). On September 9, 1937 Federal acquired the bonds from Darrow for \$2,025 (Tr. 2174), which had been paid in two installments (Tr. 2185). In the interim it had paid interest of about \$153 to the Bank (Tr. 2183). However, on September 9, 1937 Federal sold \$3,000 par value of the Quincy Station bonds to the issuer at a price \$442.50 higher than it had paid Darrow (Tr. 2175). At that date Federal had received \$420 in interest on those bonds (Tr. 2179). On September 1, 1938 the remaining \$2,000 par value of Quincy Station bonds were sold by Federal to the issuer at a price of \$295 higher than it had paid Darrow (Tr. 2176). At this latter date Federal had received \$377.50 interest on these bonds (Tr. 2179).

On November 12, 1935, Darrow borrowed \$6,837.50 from the First National Bank on the security of \$10,000 of International Railways of Central America 6½% bonds and \$2,000 in bonds of an Italian electric company. (Resp. Ex. 2 of Mar. 5, 1947; Tr. 2201) With the proceeds of these loans he said he purchased \$76,000 par value of various issues (Tr. 2178). However, his enumeration of the 613 bonds purchased would indicate that he purchased \$71,100 par value of bonds for \$6,987.50 (Tr. 2202). Nowhere is this discrepancy explained.

All the securities acquired with the proceeds of the two loans were eventually paid for by the Federal Group or the

National group, Darrow's notes were paid in full and returned to him (Tr. 2206). The trusts paid a total of \$8,862.50 in principal and \$717.22 as interest on the two notes. (Tr. 2208). From the time these securities were purchased by Darrow until they were all acquired by the trusts a total of \$10,062.14 in interest was paid on the bonds, all of which was credited to the accounts of the trusts (Tr. 2209). Darrow testified that the securities had substantially higher market values at the time they were acquired by the trusts than they had when Darrow originally purchased them (Tr. 2209, 2210).

Darrow also made a direct loan to one of the subsidiaries. On March 10, 1939 he borrowed \$2,600 on personal collateral. (Resp. Ex. 1 of March 18, 1947; Tr. 2225-2228). He loaned this sum to Columbus Parcel Post Building, Inc. which had an opportunity to purchase \$5,000 par value of its own first mortgage bonds of last maturity for \$2,500 (Tr. 2228). He said that he deemed it was to the benefit of Columbus to retired \$5,000 of its debt at fifty cents on the dollar so he made the purchase from Colonial, the offeror (Tr. 2229). He thought, the extra \$100 was used to give Columbus a bank account. Darrow took no note from Columbus for this loan but said that Columbus' ledgers reflected it (Tr. 2229). It was fully paid on May 2, 1940 (Tr. 2229), Columbus also having paid \$102.14 interest (Tr. 2230). Had these bonds not been acquired Columbus would have been bound to pay a total of \$2,275 in interest to the holders up until January 1, 1947 (Tr. 2233). Darrow did not profit in any respect as a result of these transactions.

On the whole the record would seem to indicate that 614 the trusts benefited by Darrow's actions in these matters but there is no clear evidence as to the exact amount (Tr. 2459-2468).

2. Miss Johnson's Services.

Darrow testified that Miss Johnson's services were of great value to the trusts in effecting reorganizations of the subsidiaries (Tr. 971). In addition to furnishing data, working on plans, conferring with attorneys for the corporations and the securities-holders, she secured a great many consents to proposed plans. Because of her personal acquaintance with a large number of bondholders, the bonds originally having been issued by Jacob Kulp & Co., she was in an ideal position to do this type of work (Tr. 1716-1772, 1824, 1825).

Of course, no attempt was made in these hearings to consider the fairness of the various plans of reorganizations of the subsidiaries. But it should be noted that Miss Johnson participated in reorganizations where the claims of Joseph Kulp & Co. (then held by Baumann) were set up. She admitted that she knew these accounts receivable arose from advances of commingled funds (Tr. 1856). She said, however, that she never discussed their origin with Darrow and never suggested that objections might be filed to these claims (Tr. 1857, 1860). It must also be borne in mind that during this period Miss Johnson and Colonial were purchasing bonds from bondholders and reselling them to Darrow at a profit-sometimes on the same day. (Infra Section A)

3. Income Tax Reduction.

Darrow effected a considerable saving to Federal by successfully contesting a claim of the government for \$150,000 in income taxes for the years 1931 and 1932. Darrow, working only with Marquiss, developed the theory of 615 obsolescence which proved successful. This saving plus the saving resulting from the allowance of certain bad debts of an unspecified amount amounted to \$130,000 (Tr. 2297-2305, 2383-2386, 2427).

616

CONCLUSIONS OF LAW

1. Trading in Underlying Securities by Employees of Trustee.

It is fundamental that a trustee must exercise due care and prudence in the administration of the trust estate. Insofar as the employment of agents and servants is concerned, his duties may more specifically be stated to be as follows:

1. First, the trustee must exercise due care in the original hiring of employees.

A. He must be satisfied that the persons he selects to work for him are not only competent but trustworthy as well. The latter characteristic is extremely important because the trustee's employees are fiduciaries.

(1) Hindsight reveals that although Mr. Darrow was correct in his estimation of the competence of Miss Johnson and Mr. Kulp, he erred seriously in

his appraisal of their trustworthiness. However, in view of the information available to him at the time of the original hiring it cannot be said that he was derelict in this respect.

B. There is another requirement that the trustee must fulfill if he is to be said to have exercised due care and prudence in the original hiring. He must arrange suitable terms of employment. The prophylactic injunction that a trustee may not place himself in a position where his personal interest may conflict with his fiduciary duty applies as well to the employees of the trustee.

617 A trustee cannot be said to have exercised due care where he knowingly allows his employees to work for him under conditions where their loyalties must necessarily be divided.

(1) In this respect, Mr. Darrow was clearly derelict in entering into an agreement with Miss Johnson and Mr. Kulp whereby they were granted permission to continue their securities business, which, as he surely must have known, dealt extensively in the securities of the trusts and their subsidiaries. A reasonably careful and prudent man could hardly have failed to recognize the obvious fact that a situation wherein the trusts and their subsidiaries were attempting to retire their indebtedness as rapidly and as inexpensively as possible, and wherein the employees of the trusts were trafficking in the bonds of the subsidiaries for profit was pregnant with potential conflicts of interest.

II. Second, the trustee must continuously and at all times exercise proper and adequate supervision over the employees he has chosen to act in his stead.

A. He must provide adequate direction and inspection of their performance of the tasks he has delegated to them.

(1) Admittedly, Mr. Darrow's conduct in this respect was satisfactory.

B. Equally important, however, is his duty to take prompt and effective action where his inspection reveals incompetence or improper conduct.

618 (1) It is clear that Mr. Darrow failed to take any action at all upon discovering that his employ-

ees were dealing in the underlying securities for profit. On the contrary, the record indicates that he not only acquiesced in such activity and permitted disloyalty to flourish, but also knowingly purchased securities from them and thereby allowed their infidelity to inflict direct financial loss upon the trusts in many instances.

In *re. Meinhard v. Salmon*, 249 N. Y. 458 (1928), Mr. Justice Cardozo stated with respect to the duties of a fiduciary that "many forms of conduct permissible in a work-a-day world for those acting at arms length are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor, the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of the courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions. (*Wendt v. Fischer*, 243 N. Y. 439, 444). Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court."

In the case of *Thrice et al. v. Comstock*, 121 Fed. 620, the Court held that "whenever one person is placed in such a relation to another by the act or consent of that other, or by the act of a third person, or of the law, that he 619 becomes interested for or with him, and any subject of property or business, he is in such a fiduciary relation with him that he is prohibited from acquiring rights in that subject antagonistic to the person with whose interests he has become associated."

In the case of *McClure v. Middletown Trust Co.*, 95 Conn. 148 (110 Atl. 838), the Court held at page 153 that "while the trustee may not delegate his duties and powers to others, it is obvious that he must act frequently through agents or attorneys. This is not a delegation of his powers, for the trustee remains responsible for the reasonable diligence of his agent or attorney. He must select his agents with reasonable care and he must supervise their acts with the same care."

There is not a scintilla of evidence to prove that Mr. Darrow profited in any sum whatsoever through the trading in securities of the trusts and the subsidiaries, but it is

clear that Mr. Darrow failed to exercise due care and prudence in his administration of the trust estates.

Under the established rules of law applicable to the facts and circumstances surrounding the conduct of the trustee I am constrained to find as a matter of law that Mr. Darrow must be surcharged for all profit realized by his disloyal employees by reason of his breach of duty. This includes profits earned by Colonial Securities Co., which is owned and controlled by Miss Johnson and Mr. Kulp, for equity will not allow fiduciaries to hide behind the corporate cloak to accomplish wrongful ends. It does not include profits earned by relatives and associates of Miss Johnson and Mr. Kulp because, as is indicated in the findings of fact, there is no evidence of a pattern of conduct whereby these parties were "used" by the employees of the trustee.

620 As shown by SEC Exhibit 5, profits made by the trustee's employees on dealings in the underlying securities of the Federal Facilities Realty Trust were as follows:

Colonial Securities Co.	\$8,535.98
Myrtle Johnson	5,559.98
	<hr/>
	\$14,095.96

As shown by SEC Exhibit 6 profits made by the trustee's employees on dealings in the underlying securities of the National Realty Trust were as follows:

Colonial Securities Co.	\$17,375.00
Myrtle Johnson	845.00
Jacob Kulp	430.00
	<hr/>
	\$18,650.00

The total surcharge for these profits is \$32,745.96.

2. Conclusions of Law Pertaining to Darrow's Purchase of Securities Involved in the "Seligman vs. Kulp" Case.

(a) Fundamentally, the transactions involving the securities sold in the case of Seligman vs. Kulp pursuant to the decree entered in the Superior Court of Cook County, Illinois, are of the same type as the other transactions in which the employees sold to the trustee at a profit. The trustee's acquiescence in the purchase of these

securities by his employees was a clear breach of his fiduciary duty. His subsequent purchase of some of these securities which resulted in a large profit to his employees aggravated an already unwholesome situation. Merely countenancing such disloyalty would have been sufficient ground on which to surcharge the trustee for all profits reaped by his employees. His active participation in their wrong doing makes it doubly certain that a surcharge is warranted.

(b) Mr. Darrow paid Colonial Securities Company \$12,447.55 for part of the securities in Lot I. Colonial's total yield from Lot I was \$34,905.05. The securities in Lot II, the value of which was not established, remain intact in a safety deposit box at the Continental Illinois National Bank & Trust Company in Chicago, placed therein by Attorney Louis Goldman in whose name the box is registered. His testimony with regard to the securities which he placed in the aforementioned safety deposit box displays an amazing lack of knowledge as to the identity of his client, although Miss Johnson and Mr. Goldman acted in concert with respect to the purchase of the securities at the sale conducted by the Master in Chancery, John F. Bolton. The facts, however, indicate that while Mr. Goldman stated he was the only person who had access to the safety deposit box, within a week after he placed the securities in the said box in his own name, Goldman executed a power of attorney to Mrs. Hattye Kulp enabling her to enter the box. I do not conceive that the special reference to me of Mr. Darrow's Final Account and Report as trustee and the objections filed thereto embraces the question of determining the ownership of the securities in Lot II and therefore refrain from making a finding with respect thereto. Suffice it to state, that according to the testimony given herein by Miss Johnson, ownership of the securities in said Lot II is claimed by her and Mr. Kulp subject to repayment of the loans made to Mr. Kulp by Mr. and Mrs. Joseph Baumann. It appears that on an initial investment of \$24,203.55 the employees of the trustee have so far realized a profit of \$10,701.50 and retain securities of both the Federal Facilities Realty Trust and National Realty Trust of a par or stated value of \$1,178,720. At this time it is not possible to compute accurately the further profit accruing to Miss Johnson and Mr. Kulp from the securities in Lot II.

It has been brought to my attention in the brief 622 submitted by the SEC that the Plan of Reorganization for National Realty Trust filed by the successor-trustee on January 20, 1947 contemplates cancellation of the securities in Lot II. Hence, it would seem advisable at this time to limit the surcharge to \$10,701.50 and reserve jurisdiction for a further surcharge in the event that the securities in Lot II are not cancelled through consummation of the plans of reorganization of both the National Realty Trust and the Federal Facilities Realty Trust, containing provisions therefor.

3. Conclusions of Law Pertaining to Insurance Commissions Received by Mr. Kulp.

The evidence discloses that over the period of Mr. Darrow's trusteeship, Jacob Kulp was permitted to write the insurance on the property of the trust subsidiaries. Mr. Kulp earned commissions amounting to \$16,148.83 on insurance written on trust property. There is abundant proof that Mr. Kulp reduced hazards to sustain the contention that the trusts could not have acquired their insurance wholesale at lower rates. Such rates are standardized and Mr. Kulp received only the standard broker's commission. He could not have turned these commissions back to the subsidiaries without violating the Illinois statute prohibiting rebates on insurance premiums. If Mr. Kulp had not earned these premiums someone else would have. As a matter of fact, special advantages accrued to the trusts by virtue of the fact that Mr. Kulp wrote the insurance. The testimony discloses there were times when, despite the fact that premiums were overdue, policies were kept in force only because of Mr. Kulp's excellent standing with L. A. Rose & Co. through which he wrote the insurance. No one can gainsay the fact that Mr. Darrow

623 as trustee derived greater benefits on behalf of the trusts and their subsidiaries by reason of the previous business experience between Kulp and L. A. Rose & Co. over a period of 20 years. It must be borne in mind that the trusts in this case did not suffer because the testimony revealed Kulp reduced hazards which existed on the properties in many instances and thus effected substantial reductions in premiums and rates. Despite the fact that this handling of insurance by an employee may be deemed improper, yet considering the unusual circumstances in this case it appears too drastic a penalty to impose a surcharge

upon the trustee, and I am of the opinion that equity and justice counsel otherwise. I therefore conclude that to surcharge Mr. Darrow in an amount equal to the commissions received by Mr. Kulp would be inflicting a penalty that the unusual circumstances in this matter do not warrant.

4. Conclusions of Law Pertaining to the Quincy Dividend Suits.

I. Without doubt a trustee may be held liable for failure to use diligence in prosecuting a cause of action belonging to the trust. The evidence clearly indicates that Mr. Darrow's conduct in the matter of the suits to recover the "illegal" dividend declared by the Directors of the Quincy Station Post Office Building Corporation was less than satisfactory. He failed to make a thorough investigation of the financial responsibility of the defendants. His failure to do so is seen to be even more unfortunate in view of the unusually advantageous position he occupied with respect to the defendants.

624 A. Had Mr. Darrow decided to dismiss the suits solely on the ground that the defendants were judgment proof, it would be impossible to say that he was justified in doing so. His investigation was scarcely sufficient to have supported a conclusion on which alone to base such dismissal.

B. However, there is another important factor to consider—the worth of the cause of action. Mr. Darrow's attorneys, after study of the case, were of the opinion that there was "about an even chance of recovery."

II. Taking both these factors into consideration, I cannot say that Mr. Darrow's conduct in this regard amounted to the "abandonment of a substantial cause of action." Being unsatisfied that there has been a real loss to the estate resulting from his action, I cannot bring myself to recommend that Mr. Darrow be surcharged in this connection.

5. Conclusions of Law in Re. Accounts Receivable of Jacob Kulp & Co.

I. Mr. Darrow's conduct in connection with the purchase of the assets of Jacob Kulp & Co. by his employee, Miss Johnson, is deserving of censure. His acquiescence in plans of reorganization in which the

Jacob Kulp & Co. accounts receivable were granted participation and his failure to present the fact to the Court clearly constitute further violations of his fiduciary duties.

625

- II. A surcharge to the extent of the damage ultimately suffered clearly appears warranted. However, the plan of reorganization filed by the successor-trustee of National on January 20, 1947, provides for the elimination of these receivables against National and its subsidiaries. If such a provision is contained in the plans ultimately consummated in both the National and Federal proceedings, the possibility of damage will be removed. Hence, it appears appropriate that no surcharge be made at this time, but that the matter be held open for further consideration after the plans of reorganization have been approved and confirmed in each proceeding.
- . . .

I have heretofore reserved my ruling upon the objections interposed by Mr. Herriott, attorney for the respondent Paul E. Darrow, former trustee, to S. E. C. Exhibits 7 to 16, both inclusive, and having considered the same I now overrule the objections to said exhibits which are received in evidence (p. 833 of Transcript of Evidence).

At the top of page 1596 of the Transcript of Evidence appears a question propounded by Mr. Herriott to which Mr. Courshon objected. I hereby overrule the objection and hold the question proper. Objections to respondent Darrow's Exhibit 5 being received in evidence are hereby overruled (p. 1695 Transcript of Evidence). At page 1749 626 of the transcript objection was made to the admissibility of certain testimony of Miss Johnson and having reversed my ruling thereon I now find the testimony as relevant and overrule the objections noted thereto.

With respect to the additional compensation requested by Paul E. Darrow, former trustee, in the sum of \$5,000.00 in each case, I am constrained to suggest to your Honor that under all the circumstances surrounding these matters it is optional with the Court whether any further compensation be allowed to the former trustee.

In re. Stillwell, 12 F. (2) 205, 8 Amer. Bankruptcy Reports (new series) 70, the Court held that a bankruptcy

trustee, who made no report for two years, and whose report, when made, was insufficient to show the true state of accounts, etc. etc., was not entitled to compensation. In re. Fidler, 172 F. 632, Amer. Bankruptcy Report 16, the Court held "where a bankrupt's trustee was allowed to resign to avoid the odium of removal because of his friendly attitude to the bankrupts, and his apathy to proceedings instituted to compel the bankrupts to turn over property which they had withheld, his claim for compensation should be at least partially denied.

I feel that it would be proper for this Honorable Court to withhold consideration of any compensation to Paul E. Darrow former trustee, or his former counsel until the matters herein involved are finally determined by this Court.

All Of Which Is Respectfully Submitted this 28th day of April, 1948.

Archie H. Cohen
Special Master.

627 The Special Master respectfully represents that he has devoted upwards of 785 hours in reading the Final Report and Account of Paul E. Darrow, former trustee, as supplemented, the objections filed thereto, the Brief submitted by the various counsel for interested parties, research of cases cited, the Transcript of the Testimony and Documentary Evidence, attendance at the hearings held in the above matter, the drafting and assembling of the Special Master's Report, and states that in his opinion the reasonable fees for services rendered in the above matters is the sum of \$7,500.00, which has been paid by the successor-trustee, Stacy C. Mosser, and Paul E. Darrow, former trustee, in equal shares. The Special Master respectfully requests that he be allowed in addition thereto the sum of \$1,000.00 for necessary and incidental expenses for stenographic and clerical services in connection with making said Report.

Archie H. Cohen
Special Master.

631 And afterwards on, to wit, the 28th day of May, 1948 came the Successor Trust Stacy C. Mosser by his attorneys and filed in the Clerk's office of said Court his certain Objections To The Master's Report Of Archie H. Cohen Filed In This Court On April 15, 1949, in words and figures following, to wit:

632

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 63175) • •

**OBJECTIONS OF STACY C. MOSSER, SUCCESSOR
TRUSTEE TO THE MASTER'S REPORT OF ARCHIE
H. COHEN FILED IN THIS COURT ON
APRIL 15, 1948.**

Now comes Stacy C. Mosser, successor trustee, by Deming, Jarrett & Mulfinger, his attorneys, and objects to certain portions of said master's report in that the master erred:

1. In finding that Mr. Darrow's accounts should not be surcharged with the sum of Sixteen Thousand One Hundred Forty-eight Dollars and Eighty-three Cents (\$16,148.83), representing insurance commissions paid to Jacob Kulp, one of the trustee's employees, on insurance written on behalf of the two above mentioned trust estates and their subsidiary corporations.

2. In failing to find that the trustee has failed to account for securities purchased at the judicial sale in the case of *Seligman vs. Kulp* in the Superior Court of Cook County through the agency of the trustee's employees and with money furnished by the trustee (and others who loaned money to Miss Johnson, but claimed no interest in the transaction and who were subsequently repaid), although, the master found that the trustee participated in said purchase.

633 3. In reviewing and stating facts relative to the ownership of the securities sold at the judicial sale in the suit of *Seligman vs. Kulp* and the accounts receivable acquired through the Jacob Kulp & Company bankruptcy proceedings which are immaterial and incompetent, in that they refer to alleged interests in said securities and ac-

Objections to Master's Report

counts receivable purported to have been given to or received by third persons as a result of the illegal acts of the trustee's employees.

4. In failing to make proper findings of fact relative to the ownership of the securities sold at the judicial sale in the suit of *Seligman vs. Kulp* and the accounts receivable acquired through the Jacob Kulp & Company bankruptcy proceedings.

5. In failing to make proper findings and conclusions pertaining to the compensation of Mr. Darrow, Miss Johnson, and Mr. Kulp.

6. In making findings and conclusions pertaining to the "Quincy dividends suits", which are contrary to the evidence and the law and equities of the case.

The objector, therefore, respectfully requests that this Court enter its order or orders modifying the report of the said master, Archie H. Cohen, in respect to the matters hereinbefore set forth.

Stacy C. Mosser, successor trustee.
By Deming, Jarrett & Mulfinger
His Attorneys.

33 N. La Salle Street,
Chicago, Illinois,
CEntral 4378.

634 And on, the same day to wit, the 28th day of May, 1948 came the Securities And Exchange Commission by its attorneys and filed in the Clerk's office of said Court its certain Objections To The Report Of Speical Master Archie H. Cohen, Dated April 28, 1948 On The Final Reports And Accounts Of Paul E. Darrow And Objections Thereto in words and figures following, to wit:

635

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 63175) • •

OBJECTIONS OF THE SECURITIES AND EXCHANGE COMMISSION TO THE REPORT OF SPECIAL MASTER ARCHIE H. COHEN DATED APRIL 26, 1948 ON THE FINAL REPORTS AND ACCOUNTS OF PAUL E. DARROW AND OBJECTIONS HERETO.

Comes now the Securities and Exchange Commission and presents the following objections to the report of Special Master Archie H. Cohen dated April 28, 1948 relating to the Final Reports and Accounts of Paul E. Darrow, former trustee:

1. The Special Master erred in his findings of fact and conclusions of law bearing upon Objection No. 10 of the Commission in the case of Federal Facilities Realty Trust (Federal), relating to the failure of the former trustee to prosecute a cause of action based upon the declaration of an illegal dividend in the amount of \$100,000 by the board of directors of Quincy Station Post Office Building Corporation (Quincy), particularly in the following respects:

(a) The conclusion that the dismissal of litigation predicated upon such cause of action did not amount to the abandonment of a substantial cause of action by the former trustee is contrary to the evidence and the applicable principles of law.

636 (b) The Special Master omits to find, under the evidence, that the former trustee had failed to sustain the burden of establishing that he had not in violation of his fiduciary duty causes the abandonment of a substantial cause of action.

(c) The Special Master omits to find that at the time of the declaration of said dividend, Myrtle Johnson, Jacob Kulp and his son, Lee Kulp, who comprised the board of directors of Quincy, were also the common law trustees of Federal.

(d) The Special Master omits to find that the transaction whereby Federal assumed the obligation of Jacob Kulp to Quincy which was thereafter purportedly paid by said dividend, was effected through an offer made by Myrtle Johnson, Jacob Kulp and Lee Kulp to Federal, and by an acceptance of this offer on behalf of Federal by the same individuals as common law trustees.

(e) The Special Master finds that the suits in the state court against Jacob Kulp, et al, to recover the amount of the illegal dividend were dismissed on June 20, 1938, whereas the uncontroverted evidence shows that these suits were dismissed on June 15, 1938. The materiality of the difference in dates is that by July 20, 1938, when the matter was presented to the District Court, the state court had lost jurisdiction over the dismissed suits.

2. The Special Master erred in his conclusion (p. 79) that "it is optional with the Court whether any further compensation be allowed to the former trustee," since the evidence and the pertinent equitable principles require that further compensation be denied.

637 3. The report of the Special Master should be clarified to exclude any possible implication that findings or conclusions are made regarding claims or interests by way of lien or otherwise asserted by Joseph Baumann, his wife, or other persons not parties to the matter before the Special Master pursuant to the reference.

Respectfully submitted,
Thomas B. Hart
G. Gale Roberson
John I. Mayer
Attorneys for the Securities
and Exchange Commission.

638 And on, the same day to wit, the 28th day of May, 1948 came the Former Trustee, Paul E. Darrow by his attorneys and filed in the Clerk's office of said Court his certain Objections To The Report Of Archie H. Cohen, Special Master, Filed April 28, 1948, in words and figures following, to wit:

639

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 63175) • •

OBJECTIONS OF PAUL E. DARROW, FORMER TRUSTEE, TO THE REPORT OF ARCHIE H. COHEN, SPECIAL MASTER, FILED APRIL 28, 1948.

Now comes Paul E. Darrow, former trustee herein, by Irving Herriott, his attorney, and in objection to the report of Archie H. Cohen, Special Master, on the Final Report and Account as supplemented, filed here by the said Paul E. Darrow as former trustee in each of the above entitled proceedings, says:

1. The said Special Master erred in not finding that there is no evidence that there was any scheme or plan to defraud the trusts and that Darrow had participated in any such plan or scheme and the said Special Master erred in merely finding that there is no evidence that Darrow participated in any *explicit* scheme or plan to defraud the trusts.

2. The said Special Master erred in not stating that the matter of Darrow's not having turned over to his successor trustee an \$84,000 block of bonds of Federal Facilities Realty Trust was first brought to the Special Master's attention by Irving Herriott, counsel for Darrow, who also voluntarily, on behalf of Darrow, agreed 640 to deliver such bonds to the successor trustee and the said Special Master erred in merely stating that it was discovered at the hearing on July 11, 1946 that Darrow still had in his possession and had not turned over to his successor trustee said block of bonds.

3. The said Special Master erred in stating that there was no evidence introduced by Darrow showing that all

interest received on bonds of the estate was reported in his Final Account and Report, and in not finding that all such interest had by him been fully accounted for and reported.

4. The said Special Master erred in not finding that the trusts had been very substantially benefited by Darrow's actions in purchasing bonds for the trusts with Darrow's personal funds and in merely stating that the "record would seem to indicate that the trusts benefited by Darrow's actions in these matters."

5. The said Special Master erred in finding that the prices fixed by Darrow for the purchase of bonds was determined largely by the speed with which the bonds came in; that is, if quickly the prices were raised, if slowly the prices were lowered, and in not finding that the converse was true.

6. The said Special Master erred in finding that any bonds which Darrow acquired by purchase for the Chairman Account were sold to various individuals.

7. The said Special Master erred in not characterizing the saving in income taxes effected by Darrow for Federal Facilities Realty Trust as "substantial" rather than "considerable."

8. The said Special Master erred in not finding that, as a result of Darrow's services as trustee in each of the foregoing proceedings, both estates were substantially benefited and their value greatly enhanced.

541 9. The said Special Master erred in not finding that Darrow's actions as trustee as aforesaid were at all times in the utmost good faith and that the record clearly establishes that Darrow's actions were intended to and did serve the best interests of the trusts.

10. The said Special Master erred in finding that there was any discrepancy with respect to Darrow's purchase of bonds for the trusts with his own personal funds.

11. The said Special Master erred in finding that Darrow was in any way remiss in the performance of his duties as trustee.

12. The said Special Master erred in finding that the conduct of Jacob Kulp and Miss Myrtle Johnson was in any way improper or inimical to the best interests of the trust.

13. The said Special Master erred in finding and holding under the facts and law that Darrow was surcharge-

able to any extent whatsoever and should be penalized by surcharging him to any extent whatsoever.

14. The said Special Master erred in not finding and holding that all of the objections to the Account and Report of Darrow in each of the proceedings involved should be overruled, and said Accounts and Reports confirmed and approved.

15. The said Special Master erred in suggesting any doubt as to Darrow's right to an allowance of additional compensation for his services as trustee in each of the above entitled proceedings.

16. The said Special Master erred in not finding and holding under the facts and the law that the equities are with Darrow.

Wherefore the said Paul E. Darrow prays that the report of said Special Master be not approved in the foregoing respects, that these objections be sustained, and that orders be entered approving his Account and Report in each of the foregoing proceedings, and allowing to him additional compensation.

Respectfully submitted,

Paul E. Darrow

By Irving Herriott

His Attorney

Irving Herriott
120 South LaSalle Street
Chicago 3, Illinois
Attorney for Paul E. Darrow

643 And afterwards on, to wit, the 17th day of September, 1948 came John W. Guild, As Successor Trustee by his attorneys and filed in the Clerk's office of said Court his certain Objections To The Report Of Special Master Archie H. Cohen Dated April 28, 1948, On The Final Reports And Accounts Of Paul E. Darrow And Memoranda In Support Thereof in words and figures following, to wit:

644

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334) • •

OBJECTIONS OF JOHN W. GUILD AS SUCCESSOR TRUSTEE TO THE REPORT OF SPECIAL MASTER ARCHIE H. COHEN DATED APRIL 28, 1948 ON THE FINAL REPORTS AND ACCOUNTS OF PAUL E. DARROW AND MEMORANDA IN SUPPORT THEREOF.

Comes now John W. Guild, as successor Trustee under that certain indenture dated October 1, 1929 between Federal Facilities Realty Trust, the Debtor herein, and the Foreman Trust and Savings Bank, a corporation, given to secure an issue of collateral gold bonds Series A six and one-half percent (6½%), maturing October 1, 1939, by his Attorney Jacob B. Courshon, and makes the following objections to the report of Special Master Archie H. Cohen dated April 28, 1948 on the final reports and accounts of Paul E. Darrow, the former Trustee herein.

Since an adequate statement of facts is contained in the briefs heretofore filed herein, this Objector deems it unnecessary, in the interest of brevity, to make any repetition thereof.

Inasmuch as the objections to the report of Special Master Archie H. Cohen filed herein by the Securities and Exchange Commission and Stacey C. Mosser, the successor Trustee herein, and their briefs in support thereof, deal fully and adequately with the subject matter of their respective objections to said report, this Objector will refrain from enlargement of the record herein by repetition of the same objections and memoranda in support

thereof, and hereby adopts the objections of the Securities and Exchange Commission and Stacey C. Mosser, as successor Trustee, and the memoranda in support thereof, 645 as part of his objections to said Special Master's report; and in addition thereto this Objector makes the following objections:

1. The Master erred in his findings and conclusions with respect to the securities of the Debtors and their subsidiaries purchased in the *Seligman vs. Kulp* case in the Superior Court of Cook County by Michael Tauber and Company for and on behalf of Myrtle Johnson, an employee of Darrow, Trustee; and

2. The Master erred in his findings and conclusions with respect to the accounts receivable of Jacob Kulp and Company purchased from the Trustee in Bankruptcy of Jacob Kulp and Company by Michael Tauber and Company for and on behalf of Myrtle Johnson, an employee of Darrow, Trustee.

ARGUMENT.

In Re the Securities Purchased in the *Seligman vs. Kulp* Case: the total purchase price, including a 5% commission to Michael Tauber and Company amounted to \$24,203.55. The securities, for the purposes herein, were divided into two lots, Lot I consisting of \$199,000.00 principal amount of bonds of the subsidiaries of the National and Federal; Lot II consisting of \$286,100.00 principal amount of Federal bonds; 62,358 units of beneficial interest in Federal, and 10,761.6 units of beneficial interest in National.

Of the total purchase price, the sum of \$12,447.55 was furnished by Darrow, as Trustee. The balance of the purchase price, according to the testimony of Myrtle Johnson was raised by way of a loan from one Max Levy in the sum of \$10,000.00, and some additional monies borrowed from one George Peterson. According to her testimony, the money was loaned to her individually, and repaid in a short time, and none of the parties claim any interest in any of the securities, particularly Lot II which still remain intact in a safety deposit box at the Continental Illinois National Bank and Trust Company of Chicago. There was turned over to Darrow, as Trustee, presumably as a purchase by him from Colonial Securities Company, a corpo-

ration owned and controlled by Myrtle Johnson and Jacob Kulp, both employees of Trustee Darrow, \$128,700.00 principal amount of the bonds out of Lot I. Out of the balance of the bonds in Lot I Myrtle Johnson and 646 Colonial Securities Company realized \$22,457.50. It is to be noted that the total purchase price of all the securities, both Lots I and II, either came from funds of Darrow, as Trustee herein, or from the profits realized in the sale to the general public of some of the securities in Lot I. Neither Myrtle Johnson or any of her associates, (Kulp, Levy, Peterson or Baumann) had any investment in any of those securities.

The payment of \$12,447.55 by Darrow out of his Trust funds was made prior to the delivery of any of the securities to him, and prior to the payment of the purchase of Lots I and II in the Seligman vs. Kulp case sale. As a matter of fact, and the record so shows, Darrow's money was used in making payment for the securities, with full knowledge thereof on the part of Darrow, as Trustee, and with full knowledge on the part of Myrtle Johnson, as Darrow's employee, of the source of the securities, what the securities consisted of, and that the purchase was being made with Trust funds by persons occupying a Trust relationship to the Estate of the Debtor. It is to be noted that the money furnished by Darrow out of his Trust funds, together with the profits realized from the sale of some of the securities of Lot I were more than sufficient to pay the entire purchase price of both Lots I and II.

Let us examine the testimony as given by Attorney Louis Goldman, one of the Attorneys for the petitioning Creditors in this case, with reference to the securities in Lots I and II:

"Miss Johnson called me up and said that if I could arrange for the purchase of the securities, at not to exceed \$25,000, she would furnish the purchaser and the funds." (The \$25,000 maximum was to cover both Lots 1 and 2). (R. 220-1).

"I caused all of the securities to be released to Miss Johnson except the securities of the two top trusts, which I deposited in the vault of the Continental Bank. I don't remember if I represented anybody. I am not the owner of the securities, but at the proper time they are to be used for the benefit of my clients, the petitioning creditors." (R. 222-3).

"I would not turn these securities over to anyone until the right to possession is established in some legal proceedings or some manner satisfactorily showing proper title." (R. 227).

647 "Nobody has been in the box at the Continental and nobody is going to get in the box." (R. 230).

"I received the checks, as I remember, from Miss Johnson, but I don't recall whose checks they were." (R. 262).

"I don't know who the legal or equitable owners are of the securities in that box, but I have an opinion in the matter." (R. 275).

"The block of bonds in Lot 1 was turned over to Miss Johnson, not by me but by Michael Tauber directly." (R. 276).

"I knew she was an employee of the Trustee." (R. 277).

"We proposed to have the securities voted for a plan that the Committee representing the bondholders and beneficial certificate holders thought was fair and feasible." (R. 295).

"That pretty nearly gave us control of both cases, and in one case it does actually give us control." (R. 296).

"It was not my idea at all times to subordinate these securities. That was a subsequent development. I have not control in the subordination matter, but I thought I had control in voting. I do not know who would vote the securities." (R. 297).

"Miss Johnson never made any demand that I turn over the securities to her, nor did Darrow." (R. 300).

"I find Miss Johnson very familiar with every detail of every subsidiary." (R. 350).

Notwithstanding Attorney Goldman's statement that he "didn't recall whose checks they were," he knew that the money was from Darrow, as Trustee, and were Trust funds.

An analysis of the foregoing testimony leads to but one conclusion. Attorney Goldman knew all the facts and circumstances surrounding the purchase of the securities at the sale in the Seligman case. He was an Attorney of record in this case. He represented the petitioning creditors. He had many dealings with the parties involved, particu-

larly Miss Myrtle Johnson. He knew that Miss Johnson stood in a fiduciary relationship to the Debtor, and that she was the Agent and employee of Darrow, as Trustee. He knew that the funds, or a great portion thereof, turned over to him were Trust funds. Being an Attorney with a reputation for competence and understanding he evidently had in mind the theory of the resulting Trust when 648 he said: "I would not turn these securities over to anyone until the right to possession is established in some legal proceedings or in some manner satisfactorily showing proper title."

It is thus easily to be seen that Attorney Goldman realized, and as a Lawyer knew, that Miss Johnson, as the Agent and employee of Darrow, as Trustee, had no right to take Trust funds and purchase securities of the Trust or its subsidiaries in her personal capacity. He knew that as a matter of law neither Darrow, as Trustee, nor Miss Johnson, as his Agent and employee, had the right to deal with securities arising or growing out of the Debtor or any of its subsidiaries, or to deal with any of the funds of the Debtor's Estate, or the Estate of any of its subsidiaries, in any manner or form other than for the benefit of the Debtor's Estate.

Because of their, (Darrow and Johnson) fiduciary relationship to the Debtor, they had no legal right to deal in such securities, other than for the use and benefit of the Debtor's Estate. Regardless of whether or not Miss Johnson thought she was dealing in her individual capacity, and regardless of whether or not Darrow felt that Miss Johnson had the right to deal in these securities in her individual capacity, the legal effect of every act and transaction which took place in the purchase of the securities involved in the *Seligman vs. Kulp* case, especially by the use in such acts and transactions of funds belonging to the Debtor's Estate, was, and is, that they constituted acts and transactions for the use and benefit of the Trust. In legal effect, Darrow, as Trustee, was the purchaser of the securities involved in the *Seligman vs. Kulp* case.

As a matter of law, when Myrtle Johnson used Trust funds in the purchase of the securities in the *Seligman vs. Kulp* case, consisting of securities of the Debtor and its subsidiaries, and took title or possession in herself, a Resulting Trust was created for the use and benefit of Darrow, as Trustee.

A Resulting Trust arises by operation of law in favor of the person furnishing the consideration. (65 Corpus Juris 382 and cases therein cited).

649 It was not necessary for Darrow, as Trustee, and Myrtle Johnson to have previously arranged between themselves for her to purchase the securities in the Seligman case for the use and benefit of his (Darrow's) Trust.

"A resulting Trust does not arise out of, nor is it dependent upon an agreement between the parties, but it is raised by operation of law upon a particular state of facts": Lutyens v. Ahlrich, 308 Illinois 11; Partridge v. Berliner, 325 Illinois 253; Falgowski v. Daniel, 333 Illinois 208; Tritchler v. Anderson, 334 Illinois 211; Baker v. Le Mire, 355 Illinois 626; Cook v. Blazis, 365 Illinois 625.

"A resulting Trust often occurs directly contrary to the intention of the one holding the legal title to property": McDonnell v. Holden, 352 Illinois 362.

"If the facts exist that one person's money paid for property and title was taken in another a Trust is raised in favor of the person whose money was used to purchase the property, and it is immaterial whether the purchase was made by the one or other, and it may have been made by either, without the knowledge of the other": Crawford v. Hurst, 307 Illinois 243.

"Ordinarily the existence of a resulting Trust is established by proof that the purchase price of property has been paid by one person's funds and the title to the property taken in the name of another, the Trust not arising by reason of any contract between the parties but coming into existence by operation of law in favor of the person whose money was used to purchase the property": Kinsch v. Kinsch, 348 Illinois 446.

The foregoing doctrine of Resulting Trust is well settled and accepted in all jurisdictions, without exception. The facts and circumstances in this case lend themselves to no other conclusion than that when Myrtle Johnson acquired the securities in the Seligman case by the use of funds furnished by Darrow, as Trustee, out of his separate Trusts, a Resulting Trust arose by operation of law in favor of Darrow, as Trustee, and all of the securities purchased in the Seligman case became the property of Darrow, as Trustee, and could only be dealt with by him or any of his Agents as such.

The duties and responsibilities of a Trustee, and all persons dealing with him as Trustee, and of his Agents and employees, and the well settled law with respect thereto, is amply and fully discussed in the briefs of both the Securities and Exchange Commission and Stacey C. Mosser, Trustee, and need no voluminous discussion or 650 supporting citations here. The recognized summation of the law was made by Justice Cardozo in the case of *Meinhard v. Salmon*, 249 N.Y. 438 at Page 464, in which he states:

"Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this, there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions (*Wendt v. Fischer*, 243 N.Y. 439, 444). Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court."

The power of this Court to deal with situations of the sort herein involved are inherent in its equitable powers. As the Supreme Court of the United States has spoken in the case of *American United Mutual Life Insurance Company v. City of Avon Park, Florida*, 311 U.S. 138, 85 Law Ed. 91 (1940):

"A Bankruptcy Court is a court of equity and is guided by equitable doctrines and principles except insofar as they are inconsistent with the Act A court of equity may in its discretion and in the exercise of the jurisdiction committed to it, grant or deny relief upon performance of a condition which will safeguard the public interest."

"Where such investigation discloses the existence of unfair dealing, a breach of fiduciary obligations, profiting from a trust, special benefits for the reorganizers, or the need for the protection of investors

against an inside few or of one class of investors from the encroachments of another, the court has ample power to adjust the remedy to meet the need."

The Master in his report did recommend the surcharge of Darrow's accounts to the extent that actual money profit was realized by Miss Johnson and Colonial Securities Company in the sale of securities in Lot I, being the sum of \$10,701.50. This falls short of the proper finding and recommendation which the Master should have made, namely that the purchase of all the securities in both Lots I and II was for the use and benefit of Darrow's Trust, under the doctrine of the Resulting Trust hereinbefore mentioned. Not only should Darrow's accounts be surcharged with all profits realized from the sale of securities in Lot I, but also with the value of any additional securities in Lot I remaining unsold, and a further finding that the entire of Lot II is, as a matter of fact and law, the property of the Debtor's Estate.

All findings and statements in the Master's Report of the possibilities of any of the securities in Lot II being claimed by other is erroneous. The Master erred in failing to find that as a matter of fact and law, all the securities, both Lots I and II from the very date of the purchase of those securities in the *Seligman vs. Kulp* case, were the property of the Debtor's Estate. The Master erred in failing to find that Darrow had failed to account for all property which came, or should have come into his possession as Trustee.

The conclusion of the Master to the effect that he deemed it advisable to reserve jurisdiction for a further surcharge in the event that the securities in Lot II are not cancelled through consummation of the plans of reorganization of both National and Federal, is erroneous. The Master should have found that those securities belong to the Debtor's Estate, as having been purchased with Trust funds.

In re Accounts Receivable of Jacob Kulp and Company Purchased in the Bankruptcy Proceedings of that Company from the Trustee in Bankruptcy: This Objector especially directs the Court's attention to the "Findings of Fact" in connection therewith (Pages 45 through 49—Master's Report), and the "Conclusions of Law" with reference thereto (Pages 77 and 78—Master's Report). In view of the Master's findings and the entire record of

the hearings held before the Master, it is difficult to conceive how the Master in his "Conclusions of Law" could so lightly by-pass the responsibilities of Darrow, as Trustee, with reference to these accounts receivable.

It is to be noted that the subsidiaries of Federal and National have been reorganized, and plans have been confirmed under which these accounts receivable have been recognized, allowed and provided for. In his Report the

Master stated, in his Conclusions: "His (Darrow's) 652 acquiescence in plans of reorganization in which the

Jacob Kulp and Company accounts receivable were granted participation, and his failure to present the facts to the Court, clearly constitute further violation of his fiduciary duties"; and again as the Master has stated in his "Findings of Fact" (Page 48—Master's Report), "It is clear from the fact that (when) the petition was filed Darrow was aware that the allowance of such claims would reduce the equity of the Trusts in the subsidiaries"; and "However, while Trustee and President of each subsidiary Darrow permitted the allowance of accounts receivable totaling \$81,311.34 in the reorganization plans of six of the subsidiaries in 77B proceedings", and "... it appears that many of the accounts receivable were allowed and set up without any claims ever having been filed for them", and the concluding paragraph of the Master in his "Findings of Fact" with respect to said receivables, "It should be noted, however, that Miss Johnson participated in most, if not all, of these reorganizations. At this time it appears that she and Kulp, by virtue of an understanding with Baumann, had an interest in the accounts receivable, for they were to share in them when and if Baumann's loans were repaid". In the face of these "Findings of Fact" and "Conclusions of Law" by the Master, there must of necessity follow a recommendation on his part that Darrow's accounts be surcharged for all of those accounts receivable for which allowances were made in the various subsidiaries' reorganizations, which Darrow could have prevented and should have prevented had he been diligent and conscientious and fulfilled his responsibilities as Trustee herein. This Objector, therefore, respectfully submits that the Master's "Findings" and "Conclusions" with reference to said accounts receivable in erroneous, and improperly places the burden upon the Debtor, rather than upon Darrow whose lack of diligence as Trustee made it

possible for the accounts receivable to be allowed and provided for in the aforementioned reorganizations, to the detriment and probably irreparable damage to the Estate of the Debtor, and diminution of the Debtor's equitable interest in its subsidiaries.

Respectfully submitted,
Jacob B. Courshon
Jacob B. Courshon, Attorney for
John W. Guild, as successor Trustee

653 And afterwards, to wit, on the 12th day of April, 1949 being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell District Judge, appears the following entry, to wit:

654

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334) • •
• • (Caption—No. 58335) • •

MEMORANDUM AND ORDER

CAMPBELL, District Judge.

This matter comes before the Court upon a Report of Special Master Archie H. Cohen on the Final Reports and Accounts and Supplements thereto of Paul E. Darrow, Former Trustee herein, to which objections were filed by the Securities and Exchange Commission, Stacy C. Mosser, Successor Trustee, and John W. Guild, Successor Trustee under a certain Trust Indenture.

On May 24, 1948, by order of the Executive Committee, the matters of Federal Facilities Trust, Debtor, a common law trust, and National Realty Trust, Debtor, a common law trust, were reassigned from Judge Holly's Calendar, where they were previously pending, to my Calendar. On this date, among matters pending for action, was the aforementioned Special Master's Report, together with objections filed thereto.

655 Paul E. Darrow was appointed Trustee of Federal Facilities Trust on April 25, 1935 and of National

Realty Trust on May 24, 1935. From these dates until his resignation on August 10, 1943, he served as Trustee of both Debtors, conducting their business and managing and operating their twenty-seven subsidiaries. The Final Reports and Accounts and Supplements thereto here involved cover the entire periods of time Darrow served as Trustee and were intended to fully account for his administration of these trusts.

The early history of both common law trusts is set forth in documents filed in these proceedings. It appears that in 1920 Jacob Kulp & Company became a corporation engaged in the mortgage business. After such incorporation, it organized and promoted twenty-seven building corporations which were financed through the sale of first and second mortgage bonds to the public. Each building was owned by a separate corporation and all, with a few exceptions, were constructed to be leased to the government for use as post offices or post offices combined with stores or apartments. The stock of each of these corporations was either issued to Jacob Kulp or to Jacob Kulp & Company. The principal income derived by Jacob Kulp & Company or Jacob Kulp was from the control and management of these properties.

On September 10, 1929, Federal Facilities Realty 656 was created by a Declaration of Trust naming Jacob Kulp, Lee Kulp and Myrtle Johnson as Trustees. The Federal Trust authorized its Trustees to issue 500,000 shares of beneficial interest and ten year collateral trust 6½% bonds in the sum of \$1,000,000, maturing October 1, 1939. 350,000 of these shares of beneficial interest and \$558,300.00 in bonds were issued and remain outstanding. Jacob Kulp and Jacob Kulp & Company transferred to Federal's Trustees all of the capital stock of fourteen of these building corporations for which he received 100,000 shares of beneficial interest and \$300,000 of collateral trust bonds.

On July 2, 1930, National Realty Trust was created and Jacob Kulp, Lee Kulp and Myrtle Johnson were named as Trustees. The National Declaration of Trust authorized the issuance of 180,000 shares of the par value of \$25 per share, of which 46,636.5 shares were issued and remain outstanding. Jacob Kulp and Jacob Kulp & Company transferred to National's Trustees all of the capital stock

of thirteen of the building corporations for which he received 20,000 shares of beneficial interest in the debtor.

All of these building corporations, with a few exceptions, have been reorganized since the filing of these proceedings and during the time Darrow acted as Trustee.

In December, 1934, involuntary 77-B petitions were filed in this Court by creditors of Federal Facilities Real-estate Trust and National Realty Trust, hereinafter called "Federal" and "National", and shortly thereafter Paul E. Darrow was appointed Trustee for both trusts. By order of this Court, Paul E. Darrow was authorized to contract with the subsidiaries to manage the properties, collect the rents, select the employees, and place the insurance, at a compensation of 5% of the gross income. Pursuant to this order the said Darrow employed Jacob Kulp and Myrtle Johnson, two of the founders of the trusts, to be associated with him in the performance of his duties as Trustee. By further order of this Court, the salaries of Darrow, Kulp and Johnson were fixed as follows: Darrow \$500 per month, Kulp \$300 per month and Johnson \$250 per month. It appears not to be disputed that while employed by the Trustee, Miss Johnson supervised the Trustee's office, advised him concerning management questions and personally took care of many details concerning the reorganization of the subsidiaries. Both Jacob Kulp and Miss Johnson had access to all the Trustee's records and information and dealt directly with outstanding bondholders, both in an individual capacity and as employees of the Trustee and were persons fully informed in all matters pertaining to the business of the trusts.

While employed by the Trustee, Jacob Kulp and Miss Johnson organized the Colonial Securities Company, a corporation. The stock of this company was owned by 658 the Kulp and Miss Johnson, and through this company they engaged in the business of purchasing and selling securities of the trusts' subsidiaries with Trustee Darrow's knowledge and approval.

The Court, on June 19, 1942, appointed one Frederick B. Andrews, a certified public accountant, to make an investigation of trading transactions of Federal and National and the twenty-seven subsidiaries, and upon the completion of his investigation he filed a report which became known as "the Andrews Report".

Following the Andrews' investigation, on August 13, 1943, Paul E. Darrow resigned as Trustee of Federal and National and on October 15, 1943 filed his Final Accounts. The Report in Federal covers the entire time of Darrow's trusteeship service, namely, from April 25, 1935 to August 13, 1943. In National, the period covered is from December 1, 1940 to August 13, 1943. By order of Court entered January 31, 1941 in National, the Trustee's acts and doings from May 24, 1935 to November 30, 1940 were approved.

The Federal Final Report here involved filed October 15, 1943, among other things, states that Darrow, as Temporary Trustee, was given full authority to direct, maintain and continue the business of Federal and to manage its properties, and when made permanent Trustee the additional rights, powers and authority of a Trustee in Bankruptcy and a Receiver in Equity. In accordance with 659 such power, Mr. Darrow states in such Account that he conducted the business of the Debtor; that he discovered the necessity of reorganizing many of the subsidiary corporations, and he caused the reorganization of all of Federal's subsidiaries, with the exception of the Roseland Building Corporation; that in conducting the business of the Debtor he received interest payments on bonds, management fees from the operation of the properties, and with the surplus funds from time to time purchased bonds of the subsidiary corporations. Attached to his Account is a Summary of the Status of the Underlying Companies of Federal as of August 13, 1943, and reference is made to the subsidiary corporations of Federal and a statement concerning how and when various subsidiaries were reorganized.

The Report of the Trustee in National, filed October 15, 1943, follows the same pattern as his Report in Federal and requests approval of all his acts from December, 1940 to August 13, 1943. Included in this Account is also a Summary of the Status of the Underlying Companies of National as of November 30, 1940; of Cash Receipts and Disbursements for the period of the Account from January 1, 1935 to August 13, 1943, and from December 1, 1940 to August 13, 1943, together with other matters.

The objectors to the Trustee's Accounts claim: dis- 660 crepancies exist in such Accounts; there is a failure to show the correct sums of earned and accrued in-

terest on holdings of certain subsidiaries and absence of explanations relative thereto; loans of trust funds were made and not properly accounted for; items in the summary of operating expenses are not properly explained; profits realized in trading with Jacob Kulp and Myrtle Johnson in bonds of subsidiary companies are not stated; a variance exists between the Accounts and the Detailed Schedules Supplementing such Accounts; the Trustee failed to explain his actions in the Quincy Station Office Building Corporation, and his omission to prosecute certain causes of action; the Accounts lack detailed information respecting Trustee Darrow's purchases and sales of bonds, the Trustee's requested compensation should not be allowed; the Trustee has failed to state his profits in connection with the Louis Goldman purchase of certain securities: there is a variance between the Trustee's Reports and the Frederick B. Andrews' Report; there is failure to accurately and correctly state the condition of the Paul E. Darrow Chairman Account, and to properly account for series "A" 6½% bonds made by Kulp and Company; there is a failure of the Trustee to account for distribution of claims in the Seligman vs. Kulp case and to comply with the order of Court respecting when 661 and how reports were to be made; there is a failure to show commissions or discounts paid to the Trustee on account of certain insurance purchased, and to report concerning fees and compensation paid him as a Director or Officer of certain subsidiaries of the Debtor; there is a failure to fully disclose business transactions and profits made with Colonial Securities Company, and to keep books accurately reflecting profits made or expenses incurred in his many transactions.

The hearings commenced before the Master on October 25, 1944 and concluded on May 28, 1947. Over 2500 pages of testimony were taken and the respective counsel appearing at such hearings, representing the different parties in interest, conducted extended examinations touching upon the matters contained in the Reports and Accounts. The Master filed his Report April 29, 1948.

The Master's findings of fact cover the Trustee's employees' general dealings in the securities of the trustee and their subsidiaries; the purchase of securities in the Seligman vs. Kulp case; the placing of insurance by Jacob Kulp; the Quincy Station Post Office Building Cor-

poration dividend transaction; the accounts receivable sold by Maurice Klein as Trustee in Bankruptcy in the liquidation of Jacob Kulp & Company, the physical setup 662 of the offices, telephone and sharing of help relating to Colonial Securities Co.; the history and transactions of a certain account disbursed as the Chairman Account; the records, reports and accounts of the Trustee, including current records, final reports and accounts, and report to the Court; certain discussions had between Darrow and the Securities & Exchange Commission; certain explanations and contentions of the respondent including personal loans, Miss Johnson's services and income tax reduction.

The Master's Report, consisting of 83 pages, sets forth in great detail as his findings certain parts of the pertinent testimony offered by the respective witnesses. The Securities & Exchange Commission filed with the Special Master, after the proofs were closed, an abstract of the testimony. It is evident this abstract was painstakingly and carefully prepared by its author, and, undoubtedly, was of material assistance to the Special Master in the preparation of his report. The Master's conclusions of law, summary in form, relate (1) to the trading in underlying securities by employees of the Trustee; (2) his purchase of certain securities involved in the Seligman-Kulp case; (3) the insurance commissions received by Mr. Kulp; (4) the Quincy dividend suits and (5) certain accounts receivable of Jacob Kulp & Company.

663 The Securities & Exchange Commission, Stacy C. Mosser, John W. Guild and Paul E. Darrow filed objections to the Master's Report. These objections, with the exception of the Darrow objections, in substance, state the Master erred in certain of his findings and conclusions regarding the Quincy dividend litigation, the Darrow request for additional compensation, the findings relative to the Kulp insurance commissions, the purchase and ownership of certain securities involved in the Seligman vs. Kulp case. Counsel for the former Trustee contend error was committed by the Master in making certain findings and because of his failure to make required findings. The Securities & Exchange Commission in objecting to the Special Master's recommendations pertaining to Darrow's fees "that such fees should be presently allowed," urge that the Special Master should have gone further in his report and recommended a disallowance of such fees.

Numerous briefs, both original and reply, were filed by the respective parties in support of their various objections. It is clear from an examination of these briefs and the statements found therein, along with the evidence submitted, the Trustee's failure to file reports rendered the determination of his reports and accounts not only extremely difficult but it necessitated conducting a great many hearings extending over a period of several 664 years. The Master's finding concerning the failure of the Trustee to file reports of the administration of his trust is confined to the statement: "During the eight and one-third years of Darrow's trusteeship, he filed no reports of his administration of Federal and only one of his administration of National." It further appears little or no explanation was offered the Master for the Trustee's woeful neglect of such a fundamental duty.

The Master made findings of fact which the Court has carefully considered in connection with the various objections. To discuss in detail these findings and the many objections in the light of the voluminous testimony, and to deal specifically with the various contentions of the objectors, would serve no useful purpose. To set aside all these findings would do violence to the rule that the findings of a Master are not to be disturbed unless it clearly appears such findings are not supported by the evidence. Many hours and days were spent both in taking of the testimony and the introduction of the evidence constituting a part of this report. The Master had full opportunity to see and hear the witnesses and decide the weight and value of their testimony.

The Court believes it unnecessary to summarize the Master's conclusions of law. Briefly stated, these 665 conclusions deal with the Trustee's duties, his dereliction of such duties and the legal consequences of such dereliction. Part of the Master's conclusions exonerate the Trustee from wrongdoing, other parts do not. The amount the Master concludes the former Trustee should be surcharged is fixed at the sum of \$43,447.46.

The Court, from an examination of the Master's Report, the documentary evidence submitted, the objections filed to the Master's Report and the briefs in support of such objections, finds that the objections to the findings of fact and conclusions of law of the Special Master that Paul E. Darrow, as Trustee, should be surcharged for profits

made by Colonial Securities Company, Myrtle Johnson and Jacob Kulp, in the sale of certain securities in the sum of \$38,745.96; that Paul E. Darrow should be surcharged for profits made by his employees, Myrtle Johnson and Jacob Kulp in dealing in the securities involved in the Seligman vs. Kulp transaction in the sum of \$10,701.50; that Paul E. Darrow should not be surcharged for insurance commissions earned by Jacob Kulp on insurance written on the trusts' property, that Paul E. Darrow should not be surcharged in connection with certain suits to recover a certain dividend declared by the Directors of the Quincy Station Post Office Building Corporation, and that no surcharge be presently made to 666 Paul E. Darrow's conduct in connection with the purchase of assets of Jacob Kulp & Company by his employee, Myrtle Johnson, should be and the same are hereby overruled.

The Court finds that the objections to the findings of fact and conclusions of law respecting the Paul E. Darrow request for additional compensation in Federal and National should be and the same are hereby sustained.

In view of the fact the Plan of Reorganization for National contemplates the cancellation of the securities in Lot 2, and the elimination of certain receivables against National and its subsidiaries, the determination of; the ownership of certain securities described in the conclusions of law as "securities in Lot 2"; whether or not Paul E. Darrow should be further surcharged for profits made in dealing in the securities involved in Seligman vs. Kulp; whether or not Paul E. Darrow should be surcharged for its conduct in connection with the purchase of certain assets of Jacob Kulp & Company by his employee, Myrtle Johnson; and whether or not Paul E. Darrow should be paid the additional compensation requested in his Final Reports and Accounts, will, undoubtedly, throw further light on the question whether Paul E. Darrow should be allowed the requested compensation and, therefore, the foregoing matters are hereby referred to Special Master Martin Ward in accordance with the general order of reference entered herein June 10, 1948.

667- The Court reserves the right to make such further orders respecting the approval or rejection of former Trustee Darrow's Final Reports and Accounts, and the

Notice of Appeal

585

allowance or disallowance of compensation as requested by former Trustee Darrow, as equity may require.

Enter:

Campbell
United States District Judge.

April 12, 1949.

668 And afterwards on, to wit, the 28th day of April, 1949 came the Former Trustee, Paul E. Darrow by his attorneys and filed in the Clerk's office of said Court his certain Notice Of Appeal In Each Of The Respective Cases Nos. 58334 and 58335 in words and figures following, to wit:

(Only One Notice of Appeal Submitted)

669

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

In the Matter of
FEDERAL FACILITIES REALTY
TRUST, a Common Law Trust,
Debtor.

In Proceedings
Under
Section 77-B
No. 58334

In the Matter of
NATIONAL REALTY TRUST, a
Common Law Trust,
Debtor.

In Proceedings
Under
Section 77-B
No. 58335

Appeal of:
PAUL E. DARROW, Former Trustee,
Appellant.

NOTICE OF APPEAL.

To:

Mr. C. W. Mulfinger,
33 North La Salle Street
Chicago, Illinois.

Attorney for Stacy C. Mosser,
Successor Trustee herein.

**Mr. Jacob B. Courahon,
231 South La Salle Street
Chicago, Illinois.**

**Attorney for John W. Guild,
Successor Trustee under a Trust
Indenture.**

**Messrs. Thomas B. Hart, G. Gale Roberson,
and John I. Mayer,
105 West Adams Street
Chicago, Illinois.**

**Attorneys for the Securities and
Exchange Commission.**

**Securities and Exchange Commission
105 West Adams Street
Chicago, Illinois.**

Notice Is Hereby Given that Paul E. Darrow, Former Trustee herein hereby appeals to the United States Court of Appeals for the 7th Circuit, from a certain 14-page typewritten "Memorandum and Order" entered herein 670 by the Hon. Wm. J. Campbell, under date of April 12, 1949; the said "Memorandum and Order" being concerned with the Report of Special Master Archie H. Cohen on the Final Reports and Accounts and Supplements thereof of Paul E. Darrow, former Trustee herein, and the objections thereto filed on behalf of Stacy C. Mosser, Successor Trustee, John W. Guild, Successor Trustee under a certain Trust Indenture, the Securities and Exchange Commission, and Paul E. Darrow, Former Trustee herein.

And the above Paul E. Darrow, as Former Trustee herein, particularly appeals from all parts and portions of the said "Memorandum and Order" which are in any way concerned with the following matters, to-wit:

(a) The surcharging of Paul E. Darrow for the sums of \$32,745.96 and \$10,701.50 or a total purported surcharge of \$43,447.46, or for any part of such surcharge.

(b) The denial or postponement of a hearing at this time on the request of Paul E. Darrow for additional compensation as Trustee in each of the above Debtor proceedings.

(c) The Reference of certain matters, particularly mentioned and described in the last paragraph of

of the said "Memorandum and Order" (except the final paragraph) to Special Master Martin Ward, "In accordance with the general order of Reference entered herein June 10, 1948."

(d) Any and all parts of the said "Memorandum and Order" which find or imply that Paul E. Darrow was guilty of any wrongdoing whatever as former Trustee herein.

The foregoing Notice of Appeal is respectfully submitted by

Paul E. Darrow, as Appellant herein

By Urban A. Lavery

Urban A. Lavery

33 South Clark Street

Chicago 3, Illinois, and

Irving Herriott

Irving Herriott

120 South La Salle Street

Chicago 3, Illinois.

Attorneys for Paul E. Darrow
as Appellant herein.

Dated at Chicago,
Illinois, April 29, 1949.

(Attached hereto is the following certificate):

671 United States of America } ss
Northern District of Illinois }

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court and for the Northern District of Illinois, do hereby certify that on April 29, 1949, in accordance with Rule 73 (b) of the Federal Rules of Civil Procedure a copy of the foregoing Notice of Appeal was mailed to:

Mr. C. W. Mulfinger

33 N. La Salle St.

Chicago, Illinois

Mr. Joseph B. Courshon

231 S. La Salle St.

Chicago, Illinois

Messrs. Thomas B. Hart

G. Gale Roberson, J. I. Mayer

105 W. Adams St.

Chicago, Illinois

Securities & Exchange

Commission

105 W. Adams St.

Chicago, Illinois

Statement of Points

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, this 29th day of April, A. D. 1949.

Seal

Roy H. Johnson

Clerk

By Gizella Butcher

Deputy Clerk

672 And afterwards on, to wit, the 20th day of May, 1949 came the Appellant, Paul E. Darrow by his attorneys and filed in the Clerk's office of said Court his certain Statement Of Points Under Rule 75 in words and figures following, to wit:

673

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334-58335) • •

STATEMENT OF POINTS UNDER RULE 75.

Comes now the above named Appellant, Paul A. Darrow by Urban A. Lavery and Irving Herriott his attorneys and, in connection with the matter of "Statement of Points" mentioned in subparagraph (d) of Rule 75 of the Federal Rules of Civil Procedure, Appellant respectfully shows:

A. All parties to this Appeal, by their respective Counsel, have entered into a Stipulation as to the Record on Appeal in this matter in lieu of the Pleading entitled "Designation of Contents of Record on Appeal" mentioned in subparagraph (a) of said Rule 75.

B. In such Stipulation there is to be incorporated in this Record on Appeal the "Complete Record and all of the Proceedings and Evidence in the Action" as mentioned in subparagraph (d) aforesaid, concerned with the "Statement of Points."

674 In compliance with Rule 9 of the Rules of the United States Federal Court of Appeals for the 7th Circuit, Appellant presents and files herewith with the Clerk of the District Court for inclusion in the Record on Appeal the following Statement of Separate and Par-

ticular Points of Error, which Appellant asserts and intends to urge.

Point 1. The District Court erred in his Memorandum and Order dated April 12, 1949, in sustaining the Report and Recommendations of the Master Archie H. Cohen in so far as his Report and Recommendations adversely concerned or affected this Appellant.

Point 2. The District Court erred in its Memorandum and Order last mentioned in sustaining any and all the Objections of the Securities and Exchange Commission to the said Master's Report in so far as said Objections were adversely directed to this Appellant.

Point 3. The District Court erred in its Memorandum and Order last mentioned in sustaining any and all the Objections of Stacy C. Mosser, Successor Trustee, to the said Master's Report in so far as said Objections were adversely directed to this Appellant.

Point 4. The District Court erred in its Memorandum and Order last mentioned in sustaining any and all the Objections of John W. Guild, Successor Trustee under a Trust Indenture, to the said Master's Report in so far as said Objections were adversely directed to this Appellant.

Point 5. The Court erred in so far as it failed to sustain the Objections of the Appellant Paul E. Darrow to the Report and Recommendations of the said Master.

675 Point 6. The Court erred in sustaining the Recommendation of the Master in his Report that this Appellant be surcharged the sum of \$43,447.46; and the Appellant urges that the sustaining by the District Court of any surcharge whatever in the premises was likewise a matter of reversible error.

Point 7. The Court erred in sustaining the Recommendation of the Master that the Appellant be surcharged the sum of \$32,745.96 for alleged profits made by Colonial Securities Company, Myrtle Johnson and Jacob Kulp in the sale of certain securities.

Point 8. The Court erred in sustaining the Recommendation of the Master that the Appellant be surcharged the sum of \$10,701.50 for profits made by

Statement of Points

his employees Myrtle Johnson and Jacob Kulp in certain securities with respect to the so-called Seligman vs. Kulp transaction.

Point 9. The Court erred in not relieving the Appellant from any future liability in connection with the purchase of assets of Jacob Kulp & Company by either Jacob Kulp or Myrtle Johnson personally while employed by Appellant as Trustee.

Point 10. The Court erred in referring certain matters to Special Master Martin Ward of the Federal District Court in Chicago, concerning any possible further surcharge against Appellant for alleged profits made in dealing with the securities involved in the so-called Seligman vs. Kulp transaction.

Point 11. The Court erred in failing to allow the Appellant the additional sums for compensation as Trustee in each of the above mentioned Reorganization Proceedings, namely Federal Facilities Realty Trust, District Court No. 58334 in Bankruptcy and 676 National Realty Trust, District Court No. 58335 in Bankruptcy.

Point 12. The District Court erred in failing to approve the Final Reports and Accounts and Supplements thereto of the Appellant, as such Reports and Accounts were filed by Appellant in the District Court.

Point 13. The Court erred in reserving jurisdiction to make further Order respecting the rejection of the Final Reports and Accounts of the Appellant as Former Trustee herein.

All of which is respectfully submitted.

Paul E. Darrow, Former Trustee herein,
Appellant

By Urban A. Lavery
Urban A. Lavery
Irving Herriott
Irving Herriott

His Attorneys.

Dated: May 20, 1949.

**PROOF OF SERVICE OF THE FOREGOING
STATEMENT OF POINTS.**

State of Illinois }
County of Cook } ss

Buren Bounell, being first duly sworn, deposes and says that she is secretary to Urban A. Lavery, one of the attorneys for Paul E. Darrow, Appellant, in the Proceeding named in the Foregoing Document; and that at the direction of the said attorney she served a copy of the foregoing Document on each of the following parties, being all of the attorneys of Record concerned with this Appeal: C. W. Mulfinger, 33 North La Salle Street, Chicago, Illinois, Attorney for Stacy C. Mosser, Successor Trustee herein; Jacob B. Courshon, 231 South La Salle Street, Chicago, Illinois, Attorney for John W. Guild, Successor Trustee under a Trust Indenture; Messrs. Thomas B. Hart, J. Kirk Windle and John I. Mayer, Attorneys for Securities and Exchange Commission, 105 West Adams Street, Chicago, Illinois.

Affiant further states that she served such copies 677 by mailing to each of the above named parties at the addresses given above, by United States mail, postage prepaid in a sealed envelope on Friday, May 20, 1949; the said envelope containing copy of the foregoing Document entitled "Statement of Points under Rule 75" and also a copy of this affidavit.

Further Affiant saith not.

Buren Bounell

Subscribed and sworn to
before me this 20th day
of May, 1949.

Irving W. Konigsberg
Notary Public

678 And on the same day, to wit, the 28th day of April, 1949 there were filed in the Clerk's office of said Court two certain Bonds For Costs On Appeal, In Cases Numbered 58334 and 58335 in words and figures following, to wit:

(Only One Bond Submitted)

679

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334) • •

• • (Caption—No. 58335) • •

BOND FOR COSTS OF APPEAL.

Know All Men By These Presents, that Frank E. Darrow of Chicago, Illinois, as Principal and Maryland Casualty Company as Surety are held and firmly bound to the Federal Facilities Realty Trust, a Common Law Trust, Debtor in the above entitled Proceedings, and National Realty Trust, a Common Law Trust, Debtor in the above entitled Proceedings, in the sum of Two Hundred and Fifty and no/100 Dollars (\$250.00) to be paid to the Debtors last mentioned for the payment of which well and truly to be made, we bind ourselves, our successors and assigns firmly by these presents.

Whereas, on the 12th day of April, 1949, in the above entitled Proceedings in Bankruptcy in the District Court of the United States for the Northern District of Illinois, Eastern Division, a certain "Memorandum and Order" was entered by the Honorable William J. Campbell, one of the Judges of the last mentioned Court, and

Whereas, the above named Paul A. Darrow, feeling aggrieved by the injury of such "Memorandum and Order" has appealed to the United States Court of Appeals for the 7th Circuit,

680 Now, Therefore, the condition of this obligation is such that if the said Paul E. Darrow shall prosecute his Appeal with effect and in accordance with law and pay all costs if the Appeal is dismissed or the said "Mem-

Memorandum and Order" is affirmed, then this obligation to be void; otherwise to remain in full force and effect.

Signed and sealed this 28th day of April, 1949.

Paul E. Darrow

Paul E. Darrow, as Principal
Maryland Casualty Company

By John J. Phelan, Attorney-in-Fact
Its Attorney in Fact Surety.

681 And afterwards, to wit, on the 2nd day of May, 1949
being one of the days of the regular May term of said
Court, in the record of proceedings thereof, in said en-
titled cause, before the Honorable William J. Campbell,
District Judge, appears the following entry, to wit:

682

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334) • •

• • (Caption—No. 58335) • •

DRAFT ORDER.

This cause coming on to be heard on Motion of Paul E. Darrow, Former Trustee herein. it is Ordered that the above entitled causes be, and they hereby are, consolidated for purposes of Review and Appeal therein to the United States Court of Appeals for the 7th Circuit, the said Appeal being in the matter of the Appeal of the said Paul E. Darrow from the "Memorandum and Order" of this Court heretofore entered herein April 12, 1949; the said consolidation being for the purpose of permitting one single consolidated Record to be prepared by the Clerk of this Court and transmitted to the United States Court of Appeals aforesaid.

Signed: Campbell

Judge

Dated: May 2, 1949.

Notice of Appeal

683 And afterwards on, to wit, the 11th day of May, 1949 came the Successor Trustee, John W. Guild by his attorneys and led in the Clerk's office of said Court his certain Notice Of Appeal in words and figures following, to wit:

684 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

In the Matter of:

FEDERAL FACILITIES REALTY
TRUST, a Common Law Trust,
Debtor

In Proceedings
Under
Section 77-B
Number 58334

In the Matter of:

NATIONAL REALTY TRUST, a
Common Law Trust,
Debtor

In Proceedings
Under
Section 77-B
Number 58335

Appeal of:

PAUL E. DARROW, Former Trustee,
Appellant

Cross Appeal of:

JOHN W. GUILD, as Successor
Trustee,
Appellee and
Cross Appellant

NOTICE OF APPEAL

To:

Mr. C. W. Mulfinger,
33 North La Salle Street
Chicago, Illinois
Attorney for Stacy C. Mosser,
Successor Trustee herein.

Mr. Irving Herriott,
120 South La Salle Street
Chicago, Illinois

**Mr. Urban A. Lavery,
33 South Clark Street
Chicago, Illinois**

**Attorneys for Paul E. Darrow,
Former Trustee herein.**

**Messrs. Thomas B. Hart and
John I. Mayer,
105 West Adams Street
Chicago, Illinois**

**Attorneys for the Securities
and Exchange Commission.**

**Securities and Exchange Commission
105 West Adams Street
Chicago, Illinois**

Notice Is Hereby Given that:

John W. Guild, Successor Trustee under the Trust Indenture dated October 1, 1929 issued by the Federal Facilities Realty Trust, the Debtor herein, by way of cross appeal from the appeal filed herein by Paul E. Darrow, former Trustee herein, appeals to the United States Circuit Court of Appeals for the Seventh Circuit, from that certain "Memorandum and Order" entered herein by 685 the Honorable William J. Campbell on April 12, 1949, which said "Memorandum and Order" deals with the final reports and accounts, and supplements thereof, of Paul E. Darrow, the former Trustee herein, and the objections filed thereto on behalf of Stacy C. Mosser, the Successor Trustee herein, John W. Guild, Successor Trustee under the Trust Indenture issued by the Debtor, dated October 1, 1929, and the Securities and Exchange Commission, and the report of Special Master Archie H. Cohen upon said Trustee's final reports and accounts and the aforesaid objections thereto.

This Cross Appeal is directed to the following matters:

1. That part of the "Memorandum and Order" which in any way concerns the purchase of assets of Jacob Kulp And Company by the employee or employees of Paul E. Darrow, as Trustee.

2. That part of the "Memorandum and Order" which in any way concerns the securities purchased by the employee or employees of Paul E. Darrow, as

Certificate of Mailing

Trustee, in the Seligman v. Kulp case, and designated as Lot 2.

3. That part of the "Memorandum and Order" which in any way concerns commissions or discounts paid to certain employees of Paul E. Darrow, as Trustee, on account of insurance purchased by said Trustee, or by certain of the subsidiary Corporations of the Debtors, under the supervision and control of said Trustee, and particularly concerning insurance commissions paid to Jacob Kulp, an employee of said Trustee.

The foregoing Notice of Appeal is respectfully submitted by

John W. Guild, as Successor Trustee under that certain Trust Indenture issued by Federal Facilities Realty Trust, the Debtor, on October 1, 1929.

By Jacob B. Courshon

Jacob B. Courshon
231 South La Salle Street,
Chicago 4, Illinois

Attorney for John W. Guild, as
Appellee and Cross Appellant

Dated at Chicago, Illinois,
May 11th, 1949.

(Attached Hereto Is The Following Certificate):

686 United States of America }
Northern District of Illinois } ss.

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that on May 11, 1949, in accordance with Rule 73 (b) of the Federal Rules of Civil Procedure a copy of the foregoing Notice of Appeal was mailed to

Mr. C. W. Mulfinger
33 N. La Salle St.
Chicago, Illinois

Mr. Irving Herriott
120 South La Salle St.
Chicago, Illinois

Mr. Urvan A. Lavery
33 S. Clark St.
Chicago, Illinois

Messrs. Thomas B. Hart
John I. Mayer
105 W. Adams St.
Chicago, Illinois

Securities & Exchange Commission
105 W. Adams St.
Chicago, Illinois

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, this 11th day of May, A. D., 1949.
Seal

Roy H. Johnson

Clerk

By Gizella Butcher

Deputy Clerk

687 And afterwards on, to wit, the 24th day of May, 1949 came the Successor Trustee, John W. Guild by his attorneys and filed in the Clerk's office of said Court his certain Statement Of Points Relied Upon in words and figures following, to wit:

688

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334) • •
• • (Caption—No. 58335) • •

STATEMENT OF POINTS RELIED UPON BY JOHN
W. GUILD AS SUCCESSOR TRUSTEE, APPELLEE
AND CROSS APPELLANT UNDER C.C.A. RULE
9 (1)

Now comes John W. Guild, as Successor Trustee, Appellant and Cross Appellant, by Jacob B. Courshon, his Attorney, and in compliance with Rule 9 of the Rules of the United States Circuit Court of Appeals, files herewith with the Clerk of the District Court of the United States, For The Northern District of Illinois, Eastern

Division, for inclusion on the record of appeals, the following concise statement of the points upon which said Cross Appellant relies.

Point 1. The District Court erred in over-ruling the objections of this Cross Appellant to the report and recommendations of Special Master Archie H. Cohen insofar as his report and recommendations dealt with the purchase by the employee or employees of Paul E. Darrow, the then Trustee of the Debtor, of assets of Jacob Kulp And Company from the Trustee in the bankruptcy proceedings of Jacob Kulp And Company.

Point 2. The District Court erred in over-ruling the objections of this Cross Appellant to the report and recommendations of Special Master Archie H. Cohen insofar as his report and recommendations dealt with the securities purchased by the employee or employees of Paul E. Darrow, the then Trustee herein, in the Seligman v. Kulp case.

689 Point 3. The District Court erred in over-ruling the objections of this Cross Appellant to the report and recommendations of Special Master Archie H. Cohen insofar as his report and recommendations dealt with the commissions or discounts paid to certain employees of Paul E. Darrow, as Trustee, on account of insurance purchased by said Trustee or by certain of the subsidiary corporations of the Debtor under the supervision and control of said Trustee, and particularly insurance commissions paid to Jacob Kulp, an employee of said Trustee.

Respectfully submitted,

John W. Guild, as Successor Trustee under the Trust Indenture dated October 1, 1929, issued by Federal Facilities Realty Trust, the Debtor herein.

By Jacob B. Courshon.

Dated: May 24, 1949

Proof of Service of the Foregoing Statement of Points

State of Illinois }
County of Cook } ss.

Mildred Gordon, being duly sworn and under oath deposes and says that she is the Secretary to Jacob B. Courshon, the Attorney for John W. Guild, Successor Trustee, Appellee and Cross Appellant in the proceedings named in the foregoing Statement; and that at the direction of said Jacob B. Courshon she served a copy of the foregoing Statement on each of the following persons, being all of the Attorneys of Record concerned with this Appeal: Messrs. Deming, Jarrett and Mulfinger, 33 North LaSalle Street, Chicago, Illinois, Attorneys for Stacy C. Mosser, Successor Trustee herein, Messrs. Thomas B. Hart, J. Kirk Windle and John I. Mayer, 105 West Adams Street, Chicago, Illinois, Attorneys for Securities and Exchange Commission; Urban A. Lavery, 33 South Clark Street, Chicago, Illinois and Irving Herriott, 120 South LaSalle Street, Chicago Illinois, Attorneys for Paul E. Darrow, Appellant.

Affiant further states that she served such copies by enclosing a copy thereof in envelopes addressed to each of the above named parties at the addresses given above and deposited same with the requisite postage thereto attached in the United States Mail Box at 231 South LaSalle Street, Chicago, Illinois, on Tuesday, May 24, 1949, at 4:00 o'clock p.m.

Mildred Gordon

Subscribed and sworn to before
me, a Notary Public, this 24th
day of May, 1949.

Pearl Kushner

Notary Public in and for the
State and County aforesaid.

My Commission expires: 11-14-'51.

690 And afterwards on, to wit, the 18th day of May,
1949 came the Appellee, Stacy C. Mosser, Successor
Trustee by his attorneys and filed in the Clerk's office of
said Court his certain Appearance in words and figures
following, to wit:

691

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58335) • •
• • (Caption—No. 58334) • •

APPEARANCE

Pursuant to Rule I, 10 (3) of the Rules of the United
States Circuit Court of Appeals for the Seventh Circuit
we hereby enter our appearance for Stacy C. Mosser,
Successor Trustee of National Realty Trust and Federal
Facilities Realty Trust, Appellee in the above entitled
appeal.

C. W. Mulfinger
J. Edgar Kelly
Attorneys for Stacy C. Mosser,
Successor Trustee, Appellee.

Attorneys' address—
33 N. LaSalle Street,
Chicago 2, Illinois.

692 And on the same day, to wit, the 20th day of May, 1949 came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation As To Consolidated Record On Appeal in words and figures following, to wit:

693

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58335) • •

**STIPULATION AS TO CONSOLIDATED RECORD
ON APPEAL.**

I. This Stipulation is entered into by the following named parties by their respective Counsel:

(a) Stacy C. Mosser, Successor Trustee herein, one of the Appellees, by his attorney C. W. Mulfinger.

(b) John W. Guild, Successor Trustee under a Trust Indenture herein, one of the Appellees, by Jacob B. Courshon, his attorney.

(c) Securities and Exchange Commission, one of the Appellees, by Thomas B. Hart, J. Kirk Windle and John I. Mayer, its attorneys.

(d) Paul E. Darrow, Former Trustee herein, Appellant, by Urban A. Lavery and Irving Herriott, his attorneys.

And the aforementioned parties hereby agree and stipulate as follows:

II. The Record in the District Court, on the Appeal of Paul E. Darrow as Appellant (as well as on the Appeal of any Cross-Appellant herein), may be made up for certification by the Clerk of the District Court for purposes of Appeal to the United States Court of Appeals for the Seventh Circuit, by and under this Stipulation rather than under a specified "Designation of Record"; this

Stipulation being entered into by the parties hereto
694 in accordance with paragraph "(f) Stipulation as to Record" of Rule 75 of the Federal Rules of Civil Procedure. And it is accordingly stipulated that the said Record on Appeal shall include the following particular items:

Stipulation re Consolidated Record

1. Copies of Darrow's Final Reports and Accounts with Supplements thereto, including Darrow's requests for additional compensation in each of the above Proceedings; and certain Affidavits of Paul E. Darrow in connection with his said Final Reports and Accounts.

2. Copies of Objections to Darrow's Reports and Accounts just mentioned, filed on behalf of (a) Stacey C. Mosser, as Successor Trustee herein, (b) John W. Guild, Successor Trustee under a Trust Indenture herein, and (c) the Securities and Exchange Commission.

3. Copy of Order of Reference to Master Archie H. Cohen.

4. Copy of Master's Report.

5. Copy of Transcript of testimony before the Master, including all Exhibits, it being stipulated that one copy of such Transcript of testimony only may be filed with the District Court Clerk and certified by him. For purposes of convenience of the parties and their Counsel a copy of the "Abstract of Record" submitted to the trial court, in connection with the Hearing before Master Archie H. Cohen, prepared by the attorneys for the Securities and Exchange Commission, may also be included in the Record on Appeal.

6. Copy of a certain "Stipulation" entered into May 28, 1947, between counsel for the parties appearing before Master Archie H. Cohen, the Stipulation concerning the testimony of one Joseph Baumann and certain "Letters and documents" referred to in the testimony of the said Baumann and enumerated in the said stipulation, together with the Exhibits attached to the said Stipulation.

7. Copies of Objections to the Master's Report on the part of (a) Mosser, (b) Guild, (c) the Securities and Exchange Commission and (d) Darrow.

8. Copy of the trial Judge's "Memorandum and Order" of April 12, 1949, from which the Appeal by Darrow is hereby taken.

9. Copy of Notice of Appeal and Appeal Bond, it being stipulated that one copy of such Notice and one copy of such Bond is sufficient for this Record.

10. Copy of Consolidation Order of May 2, 1949, directing that one Consolidated Record may be made up and certified by the District Court for the purpose of Appeal on behalf of Darrow or any Cross-Appellant.

695 11. "Statement of Points" under Rule 75 on behalf of Darrow as Appellant; and any further "Statement of Points" on behalf of any Cross-Appellant.

12. Copy of Notice of Cross-Appeal filed by John W. Guild, by his attorney Jacob B. Courshon.

The foregoing Stipulation is hereby witnessed by the signatures of the respective counsel of the parties hereto as set out below.

Stacy C. Mosser, Successor Trustee
herein, one of the Appellees

By C. W. Mulfinger

C. W. Mulfinger, his attorney

John W. Guild, Successor Trustee under
a Trust Indenture herein, one of the
Appellees

By Jacob B. Courshon

Jacob B. Courshon, his attorney

Securities and Exchange Commission, one
of the Appellees

By Thomas B. Hart

Thomas B. Hart

J. Kirk Windle

J. Kirk Windle

John I. Mayer

John I. Mayer

Its Attorneys

Paul E. Darrow, Former Trustee herein,
Appellant

By Urban A. Lavery

Urban A. Lavery

Irving Herriott

Irving Herriott

His Attorneys.

Dated: May 17, 1949.

696 And afterwards on, to wit, the 3rd day of June, 1949, came the Appellant, Paul E. Darrow, by his attorneys and filed in the Clerk's office of said Court his certain Notice Of Motion And Motion For Extension Of Time To Certify Record in words and figures following, to wit:

697

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58335) • •

NOTICE OF MOTION

To: Mr. C. W. Mulfinger
33 North LaSalle Street
Chicago, Illinois
Attorney for Stacy C. Mosser,
Successor Trustee herein.

Mr. Jacob B. Courshon
231 South LaSalle Street
Chicago, Illinois
Attorney for John W. Guild
Successor Trustee under a Trust
Indenture.

Messrs. Thomas B. Hart, G. Gale Roberson
and John I. Mayer,
105 West Adams Street
Chicago, Illinois
Attorneys for the Securities and
Exchange Commission

Please Take Notice That on Friday, June 3, 1949 at 10:00 o'clock A. M., or as soon thereafter as the matter may be heard, we shall appear before His Honor, Judge William J. Campbell, one of the judges of the above entitled Court, in the room usually occupied by him as a courtroom in the Old Post Office Building in Chicago, Illinois, or before such other judge as may be hearing his matters at the time above mentioned, and we shall thereupon present to the Court a motion for additional time for filing and docketing the record on appeal in the above

matters in the United States Court of Appeals for the
698 Seventh Circuit in Chicago; and shall thereupon ask
the Court to enter an order in compliance with the
said Motion, copies of this Notice, the said Motion, the
affidavit in support thereof, and of a proposed draft order
of such extension being herewith served upon you.

At which place and time you may appear, if you are
fit.

Urban A. Lavery
Irving Herriott
Paul E. Darrow, Appellant
By Urban A. Lavery and
Irving Herriott, his attorneys

Dated: June 2, 1949

Received a copy of the above Notice, together with the
Motion, affidavit and Draft Order mentioned therein,
this 2nd day of June, A. D. 1949.

C. W. Mulfinger

Attorney for Stacy C. Mosser,
Successor Trustee herein

Jacob B. Courshon

Attorney for John W. Guild,
Successor Trustee under a Trust
Indenture

Securities & Exchange Commission

Per John R. O'Connor

Attorneys for Securities and Ex-
change Commission

699

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334) • •

• • (Caption—No. 58335) • •

MOTION FOR EXTENSION OF TIME TO
CERTIFY RECORD.

Comes now Paul E. Darrow, the above named appellant,
by Urban A. Lavery and Irving Herriott, his attorneys,
and moves the Court for an extension of thirty (30) days'
time beyond Tuesday, June 7, 1949 and until, to-wit:

Motion for Extension

the 7th day of July, 1949 within which to file the record in the Appellate Court and docket this appeal therein in the above consolidated cases; such Motion and request for additional time being in accordance with Rule 73(g) of the Rules of Civil Procedure for District Courts of the United States.

And in support of the said Motion there is attached hereto the affidavit of Urban A. Lavery, one of the counsel of record herein.

Respectfully submitted,

Paul E. Darrow, Appellant,

By Urban A. Lavery

Irving Herriott

His Attorneys

Dated: June 1, 1949

State of Illinois }
County of Cook } ss.

Urban A. Lavery, being first duly sworn, deposes and says that he is one of the attorneys of record for the 700 above mentioned Paul E. Darrow, appellant in the above captioned matter, and is duly authorized to make this affidavit in support of the foregoing Motion for Extension of Time; and in that behalf affiant states

(1) This appeal is a consolidation of two appeals; and this Motion comes within the purview of the provisions of Rule 73 of the Rules of Civil Procedure for District Courts of the United States, subparagraph (g), concerning the allowance by the District Court of additional time for filing and docketing of appeals where application therefor is made within the forty (40) days' time fixed by said paragraph (g) of said Rule 73;

(2) That the consolidation of the appeals in the two cases in this matter is complicated and somewhat involved and therefore takes a substantially greater amount of time and attention than would the perfecting of the record in the case of a single appeal;

(3) That the gathering together and comparison of the copies of the numerous records required for the certified record herein with the originals in each case is a laborious and extensive task for the Clerk of this Court;

(4) That the office of the Clerk has notified this affiant as one of the attorneys herein that while all of the papers and documents were furnished to the Clerk's office by counsel for appellant on or before the 25th day of May, 1949, the physical task of making such comparison of the copies of the records with the originals thereof is so laborious that the thirty (30) days' time requested in the foregoing Motion is a reasonable time within which the record can be compared and certified by the Clerk of this Court;

(5) Affiant shows that the Notice of Appeal in the above matter was filed in this Court in April 28, 1949 and that the usual forty (40) days' time under the rule for filing and docketing the record in the United States Court of Appeals will not expire until Tuesday, June 7, 1949.

Further Affiant Saith Not.

Urban A. Lavery

Subscribed and Sworn to before me
this 1st day of June, A. D. 1949.

Jane Hutchings
Notary Public

(Seal)

701 And on the same day, to wit, on the 3rd day of June, 1949 being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell, District Judge, appears the following entry, to wit:

702

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334) • •
• • (Caption—No. 58335) • •

**ORDER EXTENDING TIME FOR FILING
RECORD ON APPEAL.**

This matter coming on to be heard on the motion of Paul E. Darrow, appellant, for additional time to and

Notice of Motion

including the 7th day of July, 1949, within which to file the record on appeal in the above entitled matter with and docket the appeal with the United States Court of Appeals for the Seventh District,

And due notice of the hearing of said Motion having been given to all parties entitled to such notice; and the Court having duly considered the said Motion and heard arguments of counsel therein; and the said Motion being supported by affidavit informing the Court as to certain facts and circumstances supporting the extension of time for such filing and docketing.

Now It Is Therefore Ordered That the time within which the appellant, Paul E. Darrow, and likewise any cross-appellant herein, shall file the record on appeal in the above entitled matter with and docket all appeals herein with the Appellate Court, to-wit: the United States Court of Appeals for the Seventh Circuit, shall be and it is hereby extended to and including July 7, 1949.

Enter:

Campbell
Judge

Dated: June 3, 1949

703 And afterwards on, to wit, the 1st day of July, 1949 came the Appellant by his attorneys and filed in the Clerk's office of said Court his certain Notice Of Motion And Motions (2) in words and figures following, to wit:

704

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334) • •
• • (Caption—No. 58335) • •

NOTICE OF MOTION.

To: Mr. C. W. Mulfinger
33 North LaSalle Street
Chicago, Illinois
Attorney for Stacy C. Mosser,
Successor Trustee herein.

Mr. Jacob B. Courshon
231 South LaSalle Street
Chicago, Illinois
Attorney for John W. Guild,
Successor Trustee under a Trust
Indenture.

Messrs. Thomas B. Hart, G. Gale Roberson
and **John I. Mayer,**
105 West Adams Street
Chicago, Illinois
Attorneys for the Securities and
Exchange Commission.

Please Take Notice That on Friday, the 1st day of July, 1949, at the opening of court in the forenoon, or as soon thereafter as this matter may be heard, we shall appear before His Honor, Judge Walter J. La Buy, one of the judges of the above entitled court, in the room usually occupied by him as a courtroom in the Federal Building in Chicago, Illinois, or before such other judge as may be hearing his matters at the time above mentioned, and shall present a motion in regard to a stipulation pertaining to record on appeal in the above entitled cause, and ask the court to enter an order in accordance with said motion. Copies of this notice, the said motion and proposed draft order in accordance with said motion, are herewith served upon you.

705 At which time and place you may appear, if you see fit.

Paul E. Darrow, Appellant
By **Urban A. Lavery**
Urban A. Lavery
Irving Herriott
Irving Herriott
His Attorneys.

Dated: June 30, 1949

Received a copy of the above notice, together with the copies of motion and proposed draft order mentioned therein, this 30th day of June, A. D. 1949.

Deming, Jarrett & Mulfinger
Attorney for Stacy C. Mosser,
Successor Trustee herein.

Stipulation re Record on Appeal

Jacob B. Courahon

Attorney for John W. Guild,
Successor Trustee under a Trust
Indenture.

Thomas B. Hart

J. Kirk Windle

John I. Mayer

Attorneys for Securities and
Exchange Commission.

706

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

• • (Caption—No. 58334) • •

• • (Caption—No. 58335) • •

MOTION.

Comes now Paul E. Darrow, appellant herein, by Urban A. Lavery and Irving Herriott, his attorneys, and moves the court for an order (1) approving a stipulation of the parties in regard to the record on appeal in the above entitled cause, and (2) authorizing and directing the Clerk of this Court to proceed in accordance with said stipulation.

Respectfully submitted,

Paul E. Darrow, Appellant,

Urban A. Lavery

By Irving Herriott

His Attorneys.

710 And on to-wit, the same day the 1st day of July, 1949 came the parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation and Stipulation in Regard to Record on Appeal in words and figures following, to wit:

**711 STIPULATION IN REGARD TO RECORD ON
APPEAL**

It is hereby stipulated and agreed by and between the Securities and Exchange Commission, Stacy C. Mosser, Successor Trustee herein, John W. Guild, Successor

sor Trustee under Indenture of Mortgage, and Paul E. Darrow, Former Trustee, the parties hereto, by their respective attorneys of record, as follows:

1. That the following are true copies of the hereinafter described exhibits, Objections in connection with the hearings before Special Master Archie H. Cohen on the Final Reports and Accounts and Supplements of Paul E. Darrow, Stipulation and documents referred to in paragraph IV of said Stipulation, to-wit:

(a) Exhibits 3 of April 10, 1946, 3a of April 10, 1946, 3b of April 10, 1946 and 3c of April 10, 1946 of Stacy C. Mosser, Successor Trustee herein.

(b) Exhibits 2, 2a and 4 of Paul E. Darrow, Former Trustee.

(c) Exhibit I as of November 1, 1946 of John W. Guild, Successor Trustee under Indenture of Mortgage.

712 (d) Objections of John W. Guild as Successor Trustee under Indenture of Mortgage dated October 1, 1929, issued by the Debtor, Federal Facilities Realty Trust, to the Final Report and Account as supplemented of Paul E. Darrow, Trustee.

(e) Stipulation by and between the above parties, by their respective attorneys of record, that Joseph Baumann received through the United States mail certain documents, that Joseph Baumann wrote and forwarded by United States mail to Myrtle Johnson certain letters, of which copies were produced by the said Joseph Baumann, that Joseph Baumann produced certain documents and that copies of certain documents enumerated in said Stipulation are attached to the Stipulation and shall be received in evidence, subject to the approval of the Court and subject to objections on the grounds of relevancy and materiality.

(f) Copies of documents referred to in paragraph IV of the aforesaid Stipulation described in paragraph 1(d) of the present Stipulation.

2. That the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, is hereby authorized and directed to treat and regard such copies as originals in compiling and preparing the record on appeal of Paul E. Darrow in this cause to the United States Court of Appeals for the Seventh Circuit and on any cross-appeal in this cause to the said United States Court of Appeals for the Seventh Circuit.

**713 COPY OF EXHIBIT 3 OF APRIL 10, 1946 OF
STACY C. MOSSER, SUCCESSOR TRUSTEE**

714 Know All Men By These Presents, that Michael Tauber & Company, a corporation, of Chicago, Illinois, in consideration of Ten (\$10.00) Dollars and other valuable consideration to it in hand paid, hereby sells, assigns, transfers and conveys to Myrtle Johnson all its right, title and interest in and to certain accounts receivable, more fully described in Exhibit "A" attached hereto and made a part hereof, these accountst receivable being part of the same accounts receivable transferred to Michael Tauber & Company by Maurice Klein, as Trustee in bankruptcy of Jacob Kulp & Co.

Dated at Chicago, this 5th day of November, A. D. 1936.

Michael Tauber & Company,

By

**715 COPY OF EXHIBIT 3a OF APRIL 10, 1946
OF STACY C. MOSSER, SUCCESSOR TRUSTEE**

716 EXHIBIT "A"

Park View Manor Building Corporation First Mortgage bond No. 751, \$100, due 6/1/38, December 1, 1933 and subsequent interest coupons attached.

United States Government Parcel Post & Service Station First Mortgage bond No. 115, \$100, due 7/1/42, January 1, 1935 and subsequent interest coupons attached.

Windsor Shore Building Corporation First Mortgage Income Bonds Nos. 2, 3 and 4 for \$500 each, dated January 1, 1934 and due January 1, 1944, together with Power of Attorney to transfer bonds executed by Myrtle Johnson.

Federal Facilities Realty Trust coupons—\$474.50.

(s) Rec'd

Melvin Goldman

11/5/36 (except coupons)

717 COPY OF EXHIBIT 3b OF APRIL 10, 1946 OF
STACY C. MOSSER, SUCCESSOR TRUSTEE

718

(s) Received
Melvin Goldman
11/5/36

EXHIBIT "A"

ACCOUNTS RECEIVABLE

Federal Facilities Realty Trust, 100 W. Monroe St., Chicago	\$ 14,153.18
National Realty Trust, 100 W. Monroe St., Chicago	48,373.39
Berwyn Post Office Building Corp., 100 W. Monroe St., Chicago	3,141.67
Crandon Shore Building Corp., 100 W. Monroe St., Chicago	9,024.19
Postal Facilities, Inc., 100 W. Monroe St., Chicago	30,529.68
Ferry Station Post Office, Inc., 100 W. Monroe St., Chicago	34,864.21
Grand Rapids Parcel Post Bldg. Corp., 100 W. Monroe St., Chicago	3,463.87
Irving Park Post Office Bldg. Corp., 100 W. Monroe St., Chicago	4,472.86
La Grange Post Office Bldg. Corp., 100 W. Monroe St., Chicago	4,327.97
National Realty Trust for account of Los Angeles property, 100 W. Monroe St., Chicago..	2,175.04
McKinley Park Station Bldg. Corp., 100 W. Monroe St., Chicago	6,658.09
North Halsted Post Office Bldg. Corp., 100 W. Monroe St., Chicago	3,856.45
Park View Manor Bldg. Corp., 100 W. Monroe St., Chicago	1,507.11
Chicago Merchandise Certificates, 100 W. Monroe St., Chicago	5,888.76
Total	<u>\$172,436.47</u>

BONDS

2—\$500.00 United States Parcel Post Bldg. Co. 6¼% First Mortgage Leasehold Gold Bonds Nos. 69-70 Due Dec. 1, 1933, having Dec. 1, 1932 and subsequent coupons attached	\$ 50.00
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Kraus Bros. Loewy Co. 6¼% First Mortgage Gold Bonds, Nos. 31, 69, 70, 71, 72, 73, 77, 89, 98, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 148, 149 and 150, each for \$100.00; Nos. 152, 169, 171, 177, 178, 179, 180, 181, 187, 188, 190, 191, 194 and 234 each for \$500.00 and Nos. 261 and 262 each for \$1,000.00 all bonds having October 15, 1930 and subsequent coupons attached 635.00

**719 COPY OF EXHIBIT 3c OF APRIL 10, 1946
OF STACY C. MOSSEB, SUCCESSOR TRUSTEE**

720 United States Parcel Post Building Co. First Mtge. Leasehold bond No. 457, \$100, due June 1, 1943, with December 1, 1933 and subsequent interest coupons attached; and bonds Nos. 456, 455, 443, 397 and 274 for \$100 each; and bonds Nos. 590, 601, 651, 663, 592 for \$500 each, and bond No. 912 for \$1,000, all bonds having Dec. 1, 1933 and subsequent interest coupons attached.

5 Shares United Founders Corp. Common Stock Ctf. No. C0169978 issued in name of Miss Martha Van Malotke, dated May 19, 1930.

40 Shares Prince & Whitely Trading Corp. Common Stock, Ctf. Nos. 8750, 8749, 8748, and 8747, all dated May 15, 1930, issued in the name of Lee H. Kulp.

26 Shares of Missouri-Kansas Pipe Line Common Stock Ctf. No. C057947 dated Oct. 16, 1930 and Ctf. No. C064345 dated Nov. 24, 1930, issued in the name of Lee H. Kulp.

88/400ths share of Middle West Utilities Company Common Stock Scrip, Ctf. No. CA736641 dated Feb. 15, 1932.

2200 shares of Railroad Shares Corp. Common Stock, Ctf. Nos. 1914, 1913, 1912, 1911, 1910, 1909, 1908, 1907, 1906, 1905, 1904, all dated March 27, 1930, issued in name of Lee H. Kulp.

33/40ths shares of Missouri-Kansas Pipe Line Co., Scrip, Ctf. Nos. 77650, 67866 and 6057 and 10/800 shares Ctf. of Scrip, Nos. 9156 and 18155.

Demand note date 10/5/33 for \$10 signed by Andru Fortini.

30 day note dated 4/9/30 for \$50 signed by Hugo D. Loeb.

Demand note dated 4/11/28 for \$300 signed by Hugo D. Loeb.

Demand note dated 8/3/33 for \$50 signed by Dr. Mary Connor.

Demand note dated 9/12/33 for \$50 signed by Dr. Mary Connor, secured by Trust Receipt for 210 shares Federal Facilities Realty Trust.

Demand note dated 11/16/33 for \$20 signed by Miss Wanda Netzer, secured by 190 shares Federal Facilities Realty Trust Ctf. No. 91, attached to said note.

Grand Rapids Parcel Post Building Corporation, 2nd Mtge. coupons—\$1,202.50.

(s) Rec'd
Melvin Goldman
11/5/36 (except coupons)

Paul E. Darrow, Chairman
1st Nat'l Bank Collateral bonds bot thru
Colonial Securities Co.

Checks issued

11- 6-36	To Col. Sec. Co.	2,555.00
12- 4-36		2,750.00
12-31-36		2,960.00
2- 4-37		1,935.00
3- 5-37		1,800.00
		<hr/>
		12,000.00

Bonds received—prices set by Mr. Darrow

			<i>Disposition</i>	<i>Price</i>	
1,000.00	Armour	1st Mtge.	250.00 Co. D4-39	250.00	11/ 9/36
1,000.00	6929 N. Clark St.	1st Mtge.	250.00 Co.	250.00	11/10/36
3,000.00	Division & Lavergne	1st Mtge.	1,650.00 Nat'l Tr.	1,650.00	12/ 4/36
3,500.00	Parkview Manor	1st Mtge.	875.00 Co.	875.00	12/ 4/36
3,500.00	U. S. Bldg. Corp.	2nd Mtge.	350.00 Fed. Fac.	350.00	12/ 4/36
2,000.00	Villa Bldg. Corp.	1st Mtge.	200.00	200.00	12/ 4/36
1,500.00	22nd St.	1st Mtge.	450.00 Co. 171-232	450.00	12/28/36
4,000.00	Austin	1st Mtge.	2,040.00 Nat'l Tr.	2,040.00	12/31/36
3,000.00	Division & Lavergne	1st Mtge.	1,650.00	1,650.00	3/ 5/37
3,500.00	Austin	1st Mtge.	1,785.00 Retained		
4,000.00	Division & Lavergne	1st Mtge.	2,200.00		
3,000.00	Ogden Park	1st Mtge.	300.00		
		<hr/>			
		12,000.00			
		<hr/>			
		<hr/>			

33,000

84,000.00 Fed. Fac. received considered as no cost.

616 Stipulation re Record on Appeal
 725 COPY OF EXHIBIT 4 OF PAUL E. DARROW,
 FORMER TRUSTEE

**727 COPY OF EXHIBIT I AS OF NOVEMBER 1, 1946
OF JOHN W. GUILD, SUCCESSOR TRUSTEE UN-
DER INDENTURE OF MORTGAGE**

728 John W. Guild, as Trustee, October 7, 1946

EXHIBIT I

As of November 1, 1946—

Admitted:

**SECURITIES PURCHASED BY MYRTLE JOHNSON
OF FEDERAL FACILITIES REALTY TRUST AND
NATIONAL REALTY TRUST AND STILL HELD BY
HER BETWEEN JUNE, 1935 AND AUGUST, 1943.**

Federal Facilities Realty Trust Stock:

			Purchased from	Cost
4/16/37	Bought 150	Shares	Nickelson & Co.	\$40.50
8/28/37	Bought 100	Shares	Weinress & Co.	30.00
7/ 6/38	Bought 260	Shares	Gerstenberg & Co.	65.00
5/25/40	Bought 300	Shares	Weinress & Co.	15.00
2/24/43	Bought 277½	Shares	Caswell & Co.	50.00

National Realty Trust Stock:

5/25/40	Bought 82½	Shares	Kneeland & Co.	\$ 41.26
11/25/40	Bought 8-2/5	Shares	Kneeland & Co.	5.00
12/ 3/40	Bought 437	Shares	Kneeland & Co.	218.50
6/22/42	Bought 21	Shares	Caswell & Co.	10.50
2/25/43	Bought 104½	Shares	Caswell & Co.	110.00

729 Copy of Objections of John W. Guild as Successor Trustee under Indenture of Mortgage dated October 1, 1929, issued by the debtor, Federal Facilities Realty Trust, to the final report and account as supplemented of Paul E. Darrow, Trustee.

730

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • Caption—No. 58334 • •

OBJECTIONS OF JOHN W. GUILD, AS SUCCESSOR-TRUSTEE UNDER INDENTURE OF MORTGAGE DATED OCTOBER 1, 1929, ISSUED BY THE DEBTOR, TO THE FINAL REPORT AND ACCOUNT, AS SUPPLEMENTED, OF PAUL E. DARROW, TRUSTEE.

Now comes John W. Guild, successor-trustee under that certain indenture dated October 1, 1929, issued by the Federal Facilities Realty Trust, Debtor herein, as security for its Collateral Trust Gold Bonds Series "A" 6½%, maturing October 1, 1939, and objects to the final report and account of Paul E. Darrow, Trustee, filed herein on October 15, 1943, and as supplemented by schedules filed on February 11, 1944, covering the period from April 25, 1935 to and including August 13, 1943, upon the following grounds:

1. That said Paul E. Darrow, Trustee, has failed in said report as supplemented to account for interest earned or accrued for several years on bonds held by said Trustee, issued by certain subsidiaries of said Federal Facilities Realty Trust, and the failure to account for such interest earned or accrued is unexplained.

2. That the record herein, including said report as supplemented, discloses that said Paul E. Darrow, as Trustee, has from time to time made unauthorized loans of trust funds, some of which have not as yet been repaid.

731 3. That said report as supplemented fails to fully explain certain expenditures and fails to account for and properly explain the wiping out or relinquishment of certain accounts receivable due to the Debtor, and certain accounts receivable due to the subsidiaries of the Debtor.

4. That said Paul E. Darrow, as Trustee, has retained in his employ, on a salary basis, Jacob Kulp and Myrtle Johnson, who, the record discloses, have operated a security business in the same suite of offices with said Paul E. Darrow, as Trustee, during the period covered by said report as supplemented, and that said Jacob Kulp and Myrtle Johnson, through the operations of an alleged security business, have purchased and sold securities of the subsidiaries of the Debtor, utilizing information gained by them as employees of said Paul E. Darrow, as Trustee, and in violation of the fiduciary relationship which they, as such employees of said Trustee, occupied and the said Jacob Kulp and Myrtle Johnson have realized substantial profits by and through such trading of said securities, which profits rightfully belong to the estate of the Debtor and should have been realized on behalf of the Debtor by the said Paul E. Darrow, as Trustee, and that said Paul E. Darrow, as Trustee, has failed to account for said profits; and to the extent that any such compensation has been paid to any of said parties, same should be ordered repaid to the present Trustee, and to the extent that such repayment is not paid, that said Paul E. Darrow should be charged therefor; and that all compensation paid to said Jacob Kulp and Myrtle Johnson should be disallowed.

5. That the record herein discloses that one Louis Goldman, an attorney representing certain parties in interest in these proceedings, became the owner and holder of certain securities issued by the Debtor, or one or more of its subsidiaries; that funds of said Paul E. Darrow, as Trustee, were used in connection with the acquisition by said Goldman of said securities; that certain profits were realized therefrom; that certain of said securities rightfully belonging to the estate of the Debtor are still held by said Goldman and that the said Paul E. Darrow, as Trustee, has failed to account for said profits and has failed to reclaim said securities.

6. That heretofore, by order of this court, one Frederick B. Andrews, a certified public accountant, made a partial investigation of the affairs of said Paul E. Darrow, as Trustee, a report of which was filed herein by said Frederick B. Andrews, and which report discloses numerous sales and purchases of securities issued by the Debtor and its subsidiaries, and the report as supplemented of the said Paul

E. Darrow, as Trustee, does not agree in numerous instances with the report of purchases and sales of said securities, as disclosed by said Andrews' report, and said discrepancies are not as yet explained nor accounted for.

7. That said report as supplemented fails to give a complete accounting of all acts and transactions of said Paul E. Darrow, as Trustee, had in connection with the so-called "Paul E. Darrow, Chairman, Account". No explanation is given as to the purpose of maintaining such an account and its relationship to the administration of the estate of the Debtor, and fails to account for sundry transactions had in connection with said "Paul E. Darrow, Chairman, Account" with respect to the purchase and sale of securities of the Debtor and its subsidiaries, particularly with reference to certain payments therefrom labeled "Paid on Building Account—\$20,807.87", and fails to account for or properly explain items totalling \$12,614.08 disclosed in the 733 report of the said Frederick B. Andrews as having been paid out of said "Chairman Account" to the Payroll Account.

8. That the report filed herein by the said Frederick B. Andrews discloses numerous instances of purchases of securities issued by some of the subsidiaries of the Debtor by Paul E. Darrow, as Trustee, and a subsequent resale thereof to sundry persons, firms or corporations, all of which were improper and prejudicial to the interests of the Debtor and its creditors, and in violation of the orderly and prudent administration of the estate of the Debtor by said Paul E. Darrow, as Trustee.

9. That said Paul E. Darrow, as Trustee, has failed to show a proper accounting had with respect to the Collateral Trust Gold Bond Series "A" 6½%, maturing October 1, 1939, from the persons, firms or corporations acting as selling or distribution agents of the Debtor in connection with the sale and distribution thereof, particularly Jacob Kulp & Co., and has failed to reclaim such of said bonds for which the Debtor received no consideration.

10. That said report as supplemented fails to account for disposition of claims of the Debtor in the proceedings had in the Superior Court of Cook County, Illinois, as cause No. 35-S 11241, entitled "Seligman, et al, vs. Jacob Kulp, et al," wherein were involved certain claims and properties belonging to the Debtor's estate.

11. That because the said Paul E. Darrow, as Trustee, failed to file herein any inventory of the Debtor's estate coming into possession, and failed to file herein any interim reports of his administration of the Debtor's estate, a proper analysis of his said report as supplemented cannot be made without a detailed audit of all acts and transactions, receipts and disbursements had during the administration of Debtor's estate by the said Paul E.

Darrow, as Trustee thereof; and because of the failure of said Paul E. Darrow to so file such inventory and interim reports, and because his final report as supplemented does not conform to the orders of this court and the provisions of the Acts of Congress relating to bankruptcy, the cost of such audit should be charged to and be paid by said Paul E. Darrow.

12. That said report as supplemented fails to disclose and account for any commissions or discounts paid to said Paul E. Darrow, or to any person, firm or corporation, for his use and benefit because or on account of insurance purchased in connection with the operation and management of the estate of the Debtor and each and every of the subsidiaries thereof.

13. That said report as supplemented fails to account for all fees and compensation paid to Paul E. Darrow, as Trustee, in connection with the reorganization of each and every of the subsidiaries of the Debtor; and has failed to account for sundry and other miscellaneous fees, commissions and salaries paid to said Paul E. Darrow as a director or officer of each and every of the subsidiaries of the debtor.

14. This objector hereby adopts each and every of the objections heretofore filed herein by the Securities and Exchange Commission.

Wherefore this Objector respectfully asks that the final report and account, as supplemented, of Paul E. Darrow, as Trustee, be disapproved; that said Paul E. Darrow be disallowed any compensation herein, and that he and the surety on his bond be surcharged in such amounts as may upon a hearing be properly determined.

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Stipulation re Record on Appeal

735 Stipulation by and between the above parties, by their respective attorneys of record, that Joseph Baumann received through the United States mail certain documents, that Joseph Baumann wrote and forwarded by United States mail to Myrtle Johnson certain letters, of which copies were produced by the said Joseph Baumann, that Joseph Baumann produced certain documents and that copies of certain documents enumerated in said stipulation are attache dto the stipulaiton and shall be received in evidence, subject to the approval of the Court and subject to objections on the grounds of relevancy and materiality, together with copies of documents described in paragraph IV of said stipulation.

736

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • Caption—No. 58334-58335 • •

STIPULATION

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys of record, in each of the above entitled causes, as follows:

I. That Joseph Baumann, who previously testified in these proceedings, has received in due course through the U. S. Mail the following documents:

A. Communicatons over the name of Paul E. Darrow as president of the respective subsidiary corporations of National Realty Trust (National) or Federal Facilities Realty Trust (Federal) to which the communications relate, to wit:

1. Letter dated June 7, 1935 on Federal stationery directed to bondholders of Twenty-Second Street Station Building Corporation.
2. Letter dated August 1, 1935 on Federal stationery regarding South Side Building Corporation.
3. Letter dated February 15, 1936 on Federal stationery regarding Twenty-Second Street Station Building Corporation, enclosing plan of reorganization of said subsidiary.
4. Letter dated December 27, 1935 on National stationery regarding Postal Facilities, Inc., enclosing plan of reorganization of said subsidiary.

5. Letter dated August 1, 1935 on National stationery regarding Rogers Park Post Office Station, enclosed with letter dated August 12, 1935 from Myrtle Johnson to Mr. Joseph Baumann.
- 737 6. Letter dated February 19, 1936 on Federal stationery regarding South Side Post Office Service Building Corporation.
7. Letter dated July 27, 1936 on stationery of 6929 North Clark Street Building Corporation regarding said subsidiary.
8. Letter dated December 6, 1937 on National stationery regarding Postal Facilities, Incorporated.
9. Letter dated July 30, 1937 in mimeographed form regarding 6929 North Clark Street Building Corporation.
10. Letter dated December 13, 1937 on National stationery regarding Parkview Manor Building Company.
11. Letter dated June 9, 1939 on National stationery regarding Parkview Manor Building Company.
12. Letter dated November 1, 1939 on National stationery regarding 6748 Crandon Avenue Building Corporation.
13. Letter dated February 9, 1939 on National stationery regarding 6748 Crandon Avenue Building Corporation enclosing check for 1% on bonds.
14. Letter dated April 9, 1937 on National stationery regarding Austin Station Building Corporation enclosing check.
15. Notice of annual meeting dated December 11, 1941 to stockholders of Parkview Manor Building Company, and attached income statement.
16. Letter dated November 1, 1941 regarding 6748 Crandon Avenue Building Corporation containing Statement of Income and Expenses and enclosing check for 3% interest.
17. Letter dated July 31, 1940 regarding 6929 North Clark Street Building Corporation containing Statement of Income and Expenses and enclosing check for 2% interest.
18. Letter dated July 20, 1938 regarding Postal Facilities, Incorporated.
19. Letter dated July 20, 1938 regarding 6929 North Clark Street Building Corporation.

20. Communication dated November 1, 1942 to bondholders of 6748 Crandon Avenue Building Corporation containing Statement of Income and Expenses and enclosing check for 3% interest.
 21. Communication dated July 31, 1942 to bondholders of 6929 North Clark Street Building Corporation containing Statement of Income and Expenses and enclosing check for 3% interest.
 - 738 22. Communication dated July 31, 1941 to bondholders of 6929 North Clark Street Building Corporation containing Statement of Income and Expenses and enclosing check for 3% interest.
 23. Income statement of Parkview Manor covering the period from December 1, 1938 to November 30, 1940.
 24. Notice to shareholders of Parkview Manor Building Company of annual meeting to be held January 14, 1941, enclosing Statement of Income and Expenses.
 25. Letter dated November 1, 1940 to bondholders of 6748 Crandon Avenue Building Corporation containing Statement of Income and Expenses and enclosing check for 1½% interest.
 26. Letter dated December 22, 1938 to shareholders of Parkview Manor Building Company on the stationery of "South Shore Villa Apartments" (which is the property of Parkview Manor).
- B. Communications from Myrtle Johnson to Joseph Baumann, to wit:
1. Letter dated February 18, 1936 on National stationery enclosing communication to first mortgage bondholders of Austin Station Building Corporation over name of Paul E. Darrow, president.
 2. Letter by registered mail dated March 5, 1936 on National stationery, enclosing \$5400 first mortgage bonds of Austin Station Building Corporation and check for \$81.00.
 3. Letter dated December 21, 1936 on Federal stationery, enclosing \$45.00 interest on Twenty-Second Street Station Building Corporation bond.
 4. Letter dated January 3, 1938 on Federal stationery (addressed to Ann Botthof, secretary to Baumann) enclosing checks for interest due Jane Baumann and Marahlea Baumann on Parkview Manor Building Corporation bonds and Twenty-Second Street Station Building Corporation bonds.

5. Letter dated August 2, 1938 on National stationery enclosing interest checks.
6. Letter dated December 20, 1937 on National stationery enclosing interest checks on four different subsidiaries.
7. Letter dated August 9, 1938 on National stationery, referring to receipt of Rogers Park Post Office Station check.
8. Letter dated August 14, 1937 on National stationery addressed to first mortgage bondholders of Parkview Manor Building Corporation.
9. Letter dated August 28, 1937 on National stationery, enclosing stock certificates.
- 739 10. Letter dated December 6, 1939 on Federal stationery (addressed to Ann Botthof, secretary to Baumann) enclosing interest checks.
11. Letter dated January 29, 1940 on Federal stationery (addressed to Ann Botthof, secretary to Baumann) enclosing interest checks.
12. Letter dated June 8, 1942 on National stationery (addressed to Ann Botthof, secretary to Baumann) enclosing interest checks.
13. Letter dated August 2, 1937 on National stationery, enclosing checks for interest on bonds of South Side Post Office Service Building Corporation.
14. Letter dated October 31, 1936 on National stationery, enclosing check for \$81.00 distribution on Austin Station Building Corporation bonds.
15. Letter dated December 14, 1942 on National stationery (addressed to Ann Botthof, secretary to Baumann) enclosing checks for interest on Parkview Manor Building Company bonds.
16. Letter dated July 30, 1942 on National stationery from Myrtle Johnson, Secretary of Postal Facilities, Incorporated (addressed to Ann Botthof, secretary to Baumann), enclosing checks for interest on bonds of Station F and 6929 North Clark Street Building Corporation.
17. Letter dated July 10, 1942 on National stationery (addressed to Ann Botthof, secretary to Baumann) advising that interest checks will be mailed August 1.

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18. Letter dated February 2, 1942 on National stationery (addressed to Ann Botthof, secretary to Baumann) enclosing interest checks on bonds of Station F.
19. Letter dated November 24, 1941 on Federal stationery (addressed to Ann Botthof, secretary to Baumann) acknowledging receipt of \$3000 Twenty-Second Street Station Building Corporation and Parkview Manor Building Company interest coupons.
20. Letter dated July 23, 1941 on National stationery (addressed to Ann Botthof, secretary to Baumann) enclosing interest checks on bonds of South Side Post Office Service Building Corporation and Postal Facilities, Incorporated.
21. Letter dated June 2, 1941 on Federal stationery from Myrtle Johnson, Secretary of Twenty-Second Street Station Building Corporation (addressed to Ann Botthof, secretary to Baumann) enclosing interest check for \$45.00.
22. Letter dated June 13, 1941 on National stationery from Myrtle Johnson, Secretary of Parkview Manor Building Company (addressed to Ann Botthof, secretary to Baumann), enclosing interest checks of Parkview Manor Building Company.
- 740 23. Letter dated January 29, 1941 on National stationery (addressed to Ann Botthof, secretary to Baumann) enclosing interest checks of Postal Facilities, Incorporated and South Side Post Office Service Building Corporation.
24. Letter dated December 13, 1940 on National stationery (addressed to Ann Botthof, secretary to Baumann) enclosing interest checks.
25. Letter dated July 17, 1940 on National stationery enclosing interest checks of various subsidiaries.
26. Letter dated December 12, 1939 on National stationery (addressed to Ann Botthof, secretary to Baumann) enclosing interest checks of Parkview Manor Building Company to which is attached notice and Statement of Income and Expenses over name of Paul E. Darrow, president.
27. Letter dated June 24, 1939 on National stationery (addressed to Ann Botthof, secretary to Baumann) enclosing interest checks of Twenty-Second Street Station Building Corporation and Parkview Manor Building Company.

28. Letter dated February 3, 1939 on National stationery (addressed to Ann Botthof, secretary to Baumann) enclosing interest checks of Postal Facilities, Incorporated and South Side Post Office Service Building Corporation.
29. Letter dated May 11, 1937 on National stationery enclosing \$2000 Ogden Park Post Office Building Corporation first mortgage bonds and check for \$40 interest.
30. Letter dated February 19, 1937 on National stationery enclosing check for interest on bonds of South Side Post Office Service Building Corporation.
31. Letter by registered mail dated August 7, 1936 on Federal stationery, enclosing \$5000 South Side Post Office Service Station Corporation bonds and checks for interest.
32. Letter dated May 22, 1946 on the personal stationery of Myrtle Johnson enclosing two claim forms, one in National and one in Federal. Said letter relates to accounts receivable purchased in the Jacob Kulp & Company bankruptcy proceeding.
33. Letter dated May 16, 1946 on the personal stationery of Myrtle Johnson relating to the claim of Joseph Baumann based upon an account receivable to be filed in the National reorganization proceeding.
34. Letter dated August 26, 1938 on stationery of Colonial Securities Company, enclosing check for \$576.00.
- 741 35. Letter dated August 22, 1938 on stationery of Colonial Securities Company re Austin Station Building Corporation bonds, Crandon Avenue Building Corporation bonds and refinancing.
36. Letter dated August 12, 1938 on stationery of Colonial Securities Company suggesting sale of Austin Station Building Corporation and Ogden Park Post Office Building Corporation bonds and purchase of 6748 Crandon Avenue Building Corporation bonds.
- O. Communications from Jacob Kulp to Joseph Baumann, to-wit:
 1. Letter dated December 15, 1937 on National stationery requesting consent to plan of reorganization of Station F.
 2. Letter dated August 21, 1942 on National stationery, re San Francisco property, reciting that writer re-

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ceives only \$300 per month, has nothing to do with funds collected and that funds are "handled by Mr. Darrow who is appointed here by the Court."

D. Documents relating to reorganizations of certain subsidiaries to wit:

1. Proof of Claim in the reorganization proceeding relating to Twenty-Second Street Station Building Corporation.
2. Plan of reorganization for Postal Facilities, Incorporated.

E. Notice directed to holders of securities purchased from Jacob Kulp & Company dated September 26, 1935 over the name of Paul E. Darrow, Trustee of Federal Facilities Realty Trust and Trustee of National Realty Trust. Said notice is mimeographed on Federal stationery and states that in the interest of economy the offices of the Trusts will be moved to 1807—100 West Monroe Street. Said notice invites the holders of such securities to call at the office of the Trusts for information regarding such securities.

F. Letter dated December 16, 1941 on National stationery signed by Paul E. Darrow and addressed to Ann Bott-hof, secretary to Joseph Baumann, enclosing checks to Jane and Marahlea Baumann for interest on Parkview Manor Building Company bonds.

742 II. That said Joseph Baumann in New York wrote and forwarded by U. S. Mail to Myrtle Johnson in Chicago certain letters of which copies were produced by Joseph Baumann, to wit:

1. Copy of letter dated August 5, 1936, addressed to Myrtle Johnson, c/o Federal Facilities Realty Trust, 100 West Monroe Street, Chicago, Illinois, enclosing \$5100 South Side Post Office Service Building Corporation bonds.
2. Copy of letter dated September 1, 1936, addressed to Myrtle Johnson, c/o National Realty Trust, returning receipts for Twenty-Second Street Station Building Corporation bonds and ownership certificates covering interest on South Side Post Office Service Building Corporation bonds of Marahlea Baumann and Miss Botthof.
3. Copy of letter dated August 7, 1936 addressed to Myrtle Johnson, c/o U. S. Parcel Post Building Corporation, 100 West Monroe Street, Chicago, Illinois,

promising to mail bonds of U. S. Post Office in Cleveland, stating South Side Post Office Service Building Corporation bonds had been forwarded, enclosing ownership certificates re 6929 North Clark Street Building Corporation check and adding that Twenty-Second Street Station Building Corporation bonds had been sent in 1931.

4. Copy of letter dated May 20, 1946 stating that the writer held 10,000 shares of National in five certificates 121-135.
5. Copy of letter dated December 17, 1937, stating that consents to the amended plan of reorganization for Station F were enclosed, and also enclosing interest coupons re Austin Station Building Corporation, Ogden Park Post Office Building Corporation, Parkview Manor Building Company and Twenty-Second Street Station Building Corporation.
6. Copy of letter dated August 19, 1938, addressed to Myrtle Johnson, 100 W. Monroe Street, re sale Ogden Park Post Office Building Corporation, and Austin Station Building Corporation bonds and purchase of 6748 Crandon Avenue Building Corporation bonds.
7. Copy of letter dated August 26, 1937 addressed to Myrtle Johnson, c/o National Realty Trust, 100 W. Monroe Street, Chicago, Illinois re Parkview Manor Building Corporation.
8. Copy of letter dated December 23, 1936 addressed to Myrtle Johnson, c/o Federal Facilities Realty Trust, 100 W. Monroe Street, Chicago, Illinois re ownership certificates.
9. Copy of letter dated August 23, 1938 addressed to Miss Myrtle Johnson, c/o Colonial Securities Company, 100 W. Monroe Street, Chicago, Illinois.
- 743 10. Copy of letter dated August 19, 1938, addressed to Miss Myrtle Johnson, 100 W. Monroe Street, Chicago, Illinois.
11. Copy of letter dated February 16, 1937, addressed to Miss Myrtle Johnson, c/o National Realty Trust, 100 W. Monroe Street, in regard to extension coupons.

III. That Joseph Baumann produced the following documents:

1. Promissory note dated June 2, 1930, in the principal amount of \$80,000 signed "Jacob Kulp & Co. by Jacob

Kulp, pres." and personally guaranteed by Jacob Kulp.

2. Receipt to Mozette Baumann dated April 26, 1930 for certain enumerated stocks and bonds signed "Jacob Kulp" and containing agreement by Jacob Kulp regarding the return of the securities or their market value.
 3. Letter dated "Ap. 26" on stationery bearing no name but address of "33 South La Salle Street, Chicago" addressed to "Dear Bab" and signed "Uncle Jack".
 4. Letter dated April 14, 1941 on stationery of Myrtle Johnson addressed to Mrs. Joseph Baumann and signed "Myrtle".
 5. Letter dated April 24, 1930 on stationery of "The Bank of United States, Member of Federal Reserve System, New York," addressed to "Mr. Jacob Kulp, c/o Jacob Kulp & Co., 33 S. La Salle Street, Chicago, Illinois," and stating that certain enumerated securities are enclosed.
 6. Letter dated April 24, 1930 on stationery of "The Bank of United States, Member of Federal Reserve System, New York," addressed to "The Bank of United States, 91st St. & Broadway, New York City," and stating that certain enumerated stocks and bonds are handed to the addressee for transmission to Jacob Kulp. At the bottom of the sheet containing the letter is an acknowledgment by the addressee of receipt of the securities enumerated in the letter.
- IV. That copies of documents hereinabove numbered as I A 1, 5, 14, 26; I B 1, 3, 34, 35, 36; I C 2; I E; I F; II 1, 2, 4, 8, 10; and III 1, 2, 3, 4, 5, 6 are attached hereto and shall be received in evidence subject to approval of the Court and subject to objection on the grounds of relevancy, and materiality.

744 (s) Irving Herriott

Attorney for Paul E. Darrow, Trustee

(s) Deming, Jarrett & Mulfinger

Attorney for Stacy C. Mosser, Successor Trustee

(s) Jacob B. Courshon

Attorney for John W. Guild, Indenture Trustee

(s) Thomas B. Hart, G. Gale Roberson, John J. Mayer

Attorneys for Securities and Exchange Commission

745 FEDERAL FACILITIES REALTY TRUST

29 South La Salle Street
Telephone, DEArborn 8666
Chicago

Chicago Post Office Service Station	North Halsted Post Office
Columbus Parcel Post Station	Quincy Station Post Office
Station "D" Post Office Building	Roseland Station Post Office
Dallas Parcel Post Station	U. S. Service Station, St. Louis
Ferry Station Post Office	South Side Service Station
Irving Park Post Office	22nd Street Station Post Office
McKinley Park Station	Villa Garage

June 7, 1935.

To the Holders of First Mortgage Bonds of
Twenty-Second Street Station Building Corporation,
Chicago, Illinois.

Under date of May 24, I was appointed permanent Trustee of the Federal Facilities Realty Trust under Section 77B proceedings for the reorganization of the Trust filed in the District Court of the United States, Northern District of Illinois, Eastern Division, Case No. 58334. Under appointment of the United States District Court I had acted as temporary Trustee of the Trust for thirty days prior thereto.

At the time of my appointment as permanent Trustee of the Federal Facilities Realty Trust an Order was entered expressly authorizing me as such Trustee to vote the stock of all the Trust's subsidiaries, of which this corporation is one. Pursuant to that authorization and acting under the directions of the Court, new and independent Directors were elected and the new Board of Directors elected me President and Treasurer of the Twenty-Second Street Station Building Corporation.

As you know, the principal of the First Mortgage bond issue of our Corporation is in default and that no interest is being paid on said bonds. Because of this default and because of my duty as an appointee of the Court in the Federal Facilities Realty Trust proceedings, I felt that it was desirable in order to protect the interest of all parties in interest to institute voluntary proceedings under Section 77B of the Amendment to the Bankruptcy Act so that the whole matter will be under the Court's jurisdiction.

Accordingly a voluntary petition was filed in the District Court of the United States, Northern District of Illinois, Eastern Division, under date of May 25, 1935, Case Number 60070. Upon filing the petition the District Court entered an Order approving the petition as properly filed and ordering that the debtor and its present officers remain in possession and control of the corporation's business until the further Order of the Court. I am enclosing herewith Notices of hearing which will be held in this matter on June 21 with reference to the permanent administration of this property.

In checking the affairs of the Twenty-Second Street Station Building Corporation, I found that on September 21, 1934, a communication was sent you pertaining negotiations that were pending with the Government at that time for renewal of lease. Such negotiations culminated in a lease being entered into under the terms of which the Government is to continue to pay the sum of \$9,425 per annum for the period to and including November 30, 1936, and \$7,800 per annum from that date to September 30, 1944.

746 Under the terms of such new lease, all the improvements referred to in previous correspondence sent you are to be made, which involves an expenditure of approximately \$8,000. These improvements have partially been completed and are now being made, all income received being used to make payment therefor. The income for the next four months will also be required to make payment in full for these improvements.

I might state, however, that the 1932 and 1933 taxes have been paid in full, but the 1929 and 1930 taxes, which have been protested, have an unpaid balance of approximately \$1,600 and have been placed on the six year plan, payable out of income each year until liquidated. The 1931 taxes in the sum of \$625.00 are also unpaid and have been protested. Just as soon as payment has been completed for these improvements and the taxes placed in current position, we will undoubtedly be able to accumulate funds for distribution to the bondholders under such plan of reorganization as will be approved by the Court. In the interim only necessary expenditures, including the improvements above referred to, will be paid for so that the funds of the Corporation will be conserved pending plans of reorganization, and all future distribution of any funds will be made only

upon Court Order. You can, therefore, see that your interests are fully safeguarded.

I have not as yet had an opportunity to make as careful a survey of this property as I would like to, but I felt that I wanted to inform you of my preliminary examination on sending you the attached Notice in view of the fact that you have had no report on this property for over six months.

Trusting that I shall continue to have your cooperation, I am

Very truly yours,
Paul E. Darrow,
President,
TwentySecond Street Station Building Corporation.

PED

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NATIONAL REALTY TRUST

29 South La Salle Street
Telephone, DEArborn 8666
Chicago

Armour Station Post Office
Austin Station Post Office

Building

Berwyn Post Office

Crandonshire Building

Division and La Vergne Post Office

Station "F" Post Office

Grand Rapids Parcel Post Station

La Grange Post Office

U. S. Service Station,
Los Angeles

Ogden Park Post Office
Building

Parkview Manor Building

Rogers Park Post Office
Building

Windsor Park Station
Building

August 1, 1935.

To the Bondholders of Bonds secured by
Rogers Park Post Office Property,
6929 North Clark Street, Chicago, Ill.

We take pleasure in handing you herewith check representing a distribution of $2\frac{1}{2}\%$ on the bonds you hold of our Corporation, which covers the earnings for the period May 1, 1934 to April 30, 1935.

You will note that during this period a total of \$5,003.15 was paid for real estate taxes and we call your particular

attention to the payment of \$976.99, being first half of the 1933 taxes. Our reason for calling your attention to this item is to point out that the taxes on this property we have been successful in having reduced to approximately \$2,000 annually. This, of course, represents a substantial saving to the Corporation and if the earnings for the period from May 1, 1935 to April 30, 1936 continue at the same rate as we are now receiving we will undoubtedly be able to make a 3% distribution for the ensuing fiscal year, as all taxes are in current position with the exception of a protested balance on the 1930 taxes of approximately \$1,550, which will be paid as soon as the protest has been disposed of.

The following statement of income and expenses for the fiscal year ending April 30, we believe will evidence that the property has been operated with a minimum of expenses which enables the distribution of 2½% to be made at this time.

Income:

Rent—Post Office	\$12,490.00
Rents—Apartments	7,297.06
Refund from Chicago Title & Trust Co. from deposit for non-depositing bondholders for bonds exchanged	660.70
	<hr/>
	\$20,447.76

Expenses:

Franchise Tax	\$ 10.00	
Capital Stock Tax	10.00	
1929-1930 R.E. Taxes	3,046.31	
2nd 1/2 1932 R.E. Taxes	979.85	
1st 1/2 1933 R.E. Taxes	976.99	
Heat, Light and Water	4,464.89	
Repairs & Maintenance	1,262.45	
Management Fee	817.96	
Legal and Auditing Services	353.00	
Miscellaneous expense	205.94	
Janitor	875.00	
Renting	75.00	
Insurance	545.47	13,622.86
	<hr/>	

	\$ 6,824.90
2½% Distribution made as of August 1, 1935	6,780.00
	<hr/>

Undistributed net income.....	44.90
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If there is any further information you desire in connection with this property we shall be glad to have you call at our office for same.

Yours very truly,
6929 North Clark Street Building Corporation,
Paul E. Darrow, President.

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Dearborn 8670

Colonial Securities Company
29 South La Salle Street
Chicago

August 12, 1935.

Mr. Jos. Baumann,
S. Baumann & Bros.,
553 Sixth Avenue at 15th Street,
New York, New York.

Dear Joe:

I received your letter of August 8th and am sorry that, inadvertently, the copy of letter sent to the Rogers Park bondholders was not included with my last letter, and attached hereto you will find same.

With respect to the Station "F" bonds, of course, same will depend entirely upon what we can work out in the plan of reorganization. This matter is being given a great deal of consideration at this time and just as soon as I have something more definite to tell you on same, I will write you.

Thanks a lot for the complimentary comments regarding Valerye. I think her pictures are lovely and even though I do say so myself, they were not flattering.

I hope that business is improving somewhat with you. I understand that the furniture business in Chicago is continuing at a good pace, which I trust is also true in the East.

I hope this finds you real well and with my best wishes, I am,

Sincerely,
(s) Myrtle

MJ:EA

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NATIONAL REALTY TRUST
Suite 1807, 100 West Monroe Street
Telephone, DEArborn 8666
Chicago

Armour Station Post Office	La Grange Post Office
Anstin Station Post Office Building	U.S. Service Station, Los Angeles
Berwyn Post Office	Ogden Park Post Office Building
Crandonshore Building	Parkview Manor Building
Division and La Vergne Post Office	Rogers Park Post Office Building
Station "F" Post Office	Windsor Park Station Building
Grand Rapids Parcel Post Station	

April 9, 1937

Mr. Joseph Baumann,
S. Baumann & Bros.,
553 Sixth Ave., at 15th St.,
New York, New York.
Dear Mr. Baumann:

We enclose herewith check in the sum of \$81.00 in payment of interest coupons forwarded to us on bonds of our Corporation.

Anstin Station Building Corporation,
Very truly yours,
(s) Paul E. Darrow
President.

PED:EA

750 **SOUTH SHORE VILLA APARTMENTS,**
N.W. Cor. 69th St. and South Shore Drive, Chicago

Jacob Kulp, Manager	Business Address, Room
Residence Telephone, Midway 7257	1807, 100 W. Monroe St.
	Business Telephone, Dearborn 8666

December 22, 1938

PARK VIEW MANOR BUILDING COMPANY

Notice of Annual Meeting of the Shareholders
To the Shareholders:

Notice is hereby given that the annual meeting of the shareholders of the Park View Manor Building Company

will be held at the office of the company at Room 1807, 100 West Monroe Street, Chicago, Illinois, on January 10, 1939, at 10 o'clock A.M., for the election of directors for the ensuing year, and for the transaction of such other business as may properly come before the meeting, or any adjournment or adjournments thereof.

The books for the transfer of shares of stock of said company will be closed at the close of business on December 31, 1938, and unless otherwise ordered by the Board of Directors, will be reopened at the opening of business on January 11, 1939.

We are enclosing statement of our income and expenses for the fiscal year ending November 30, 1938, from which you will note that the earnings of the Company were sufficient to pay a total of 3% for the year on our First Mortgage bonds—1% being the distribution on June 15, 1938 and 2% December 15, 1938.

If you have not already collected the June 15th and December 15, 1938, interest, you may present your coupons for payment at this time.

Respectfully,
Paul E. Darrow,
President.

If you do not expect to be present at the meeting, please date and sign the enclosed proxy and return it in the accompanying envelope.

751—

NATIONAL REALTY TRUST

29 South La Salle Street
Telephone, DEArborn 8666
Chicago

New Address

100 W. Monroe St., Suite 1807

Armour Station Post Office	La Grange Post Office zz
Austin Station Post Office	U.S. Service Station, Los
Building	Angeles
Berwyn Post Office	Ogden Park Post Office
Crandonshore Building	Building
Division and La Vergne Post	Parkview Manor Building
Office	Rogers Park Post Office
Station "F" Post Office	Building
Grand Rapids Parcel Post	Windsor Park Station
Station	Building

February 18, 1936.

Mr. Joseph Baumann
601 West End Avenue
New York City

Dear Joe:

As long as Mr. Kulp is going to New York and we are sending out the attached letter, I am having him take it with him. You will note from this that the Austin Station Building Corporation reorganization is now completed, so that the last bonds purchased by you will be endorsed immediately after March 1, when the bonds will be sent to you together with interest check.

This only leaves the Ogden Park Post Office Building Corporation reorganization to be completed. The reorganization hearings in the Ogden Park case were finished before Judge Wilkerson about ten days ago and the matter is now up for advisement. The Ogden Park interest, which will be at the rate of 3%, will be ready for distribution just as soon as the Plan is confirmed and I will advise you latter on same. This only refers to bonds which I gave you for McKinley Park P. O. Bonds last year.

Yours very truly,
(s) M. Johnson
M. Johnson.

MJ PJ
Enca

P.S. Will you also please sign the consent on Station "F", which I sent you, as well as on Twenty-Second Street; also South Side Service.

M. J.

752

NATIONAL REALTY TRUST

29 South La Salle Street
Telephone: DEArborn 8666
Chicago

New Address
100 W. Monroe St., Suite 1807

Armour Station Post Office	La. Grange Post Office
Austin Station Post Office	U.S. Service Station, Los
Building	Angeles
Berwyn Post Office	Ogden Park Post Office
Crandonshore Building	Building
Division and La Vergne Post	Parkview Manor Building
Office	Rogers Park Post Office
Station "F" Post Office	Building
Grand Rapids Parcel Post	Windsor Park Station
Station	Building

February 17, 1936

To the First Mortgage Bondholders of
Austin Station Building Corporation.

You will undoubtedly be pleased to learn that the plan of reorganization of our Corporation has been confirmed by the Federal Court.

The confirmed plan provides for the bonds being extended and the interest rate reduced in accordance with the original plan submitted to you, with an additional provision for deposit of our capital stock with Chicago Title and Trust Company, Trustee, so long as any of the First Mortgage bonds are outstanding.

Provision covering management of the property has also been arranged so that we believe every protection has been given to the First Mortgage bondholders.

We are enclosing statement to December 31, 1935, of our receipts and disbursements since the reorganization proceedings were originally instituted, which statement also gives information as to our tax status. From this statement, you will note that no provision has been made for legal fees to be allowed by the Court in this reorganization matter as the Court still has the matter under advisement. We are confident that the Court will allow fees at a reasonable figure and our next statement will give you full information on same.

Funds are on hand to make distribution of the April 15, 1936 interest on the First Mortgage bonds, which will be paid after March 1, 1936. If your bonds have not already been deposited, will you kindly mail or bring same in after March 1, 1936, at which time the present coupons attached to the bonds will be removed and new ones attached. The bond will also be endorsed and same will be immediately returned to you.

At that time, the new April 15, 1936 coupon will be detached and payment made of $1\frac{1}{2}\%$ interest on the First Mortgage bonds covering the April 15th distribution referred to above.

If your bonds have already been deposited, will you kindly mail or bring in your receipt after March 1, 1936, when you will receive your old bonds properly endorsed with new coupons attached and interest distribution as outlined above.

At this writing, the building is 100% rented and we hope that the earnings will permit uninterrupted payment of interest every six months as provided in the plan.

Assuring you that we greatly appreciate the cooperation given by the bondholders, we are

Yours very truly,

Austin Station Building Corporation,
Paul E. Darrow, President

PED EA

753 AUSTIN STATION BUILDING CORPORATION
CASH RECEIPTS AND DISBURSEMENTS
JULY 12, 1934 TO DECEMBER 31, 1935.

Receipts

Rent—Post Office	1934	\$ 5,412.50
"	1935	12,990.00
Apartment	1934	3,475.00
"	1935	6,700.00
Stores	1934	1,185.00
"	1935	2,595.00

Received from George H. Andersen, former Trustee

270.24 \$32,627.74

Stipulation re Record on Appeal

641

Disbursements

Taxes—Account

	1929	\$1,533.61	
	1930	1,724.95	
	1931	4,366.98	
2nd ½	1932	1,664.64	
	1933	2,879.87	
1st ½	1934	1,551.07	
Franchise		55.00	
Capital Stock		10.00	
Special Assessments		1,450.88	15,237.00

Heat, Light and Water 4,056.60

Repairs and Maintenance

Plumbing	67.15	
Waste Disposal	185.00	
Carpenter	388.74	
Miscellaneous		
Supplies	241.26	
Stoker Service and Repairs	261.65	
Heating System		
Repairs	402.36	
Sundries	273.69	1,819.85

Management Fee—5% 1,666.68

Janitor 1,265.00

Insurance 1,827.09

Reorganization Expenses

Court Reporter		
Fees	357.00	
Public Notices, Printing, etc.	96.51	453.51

Legal 256.10

Auditing 66.75

Renting Commission 56.70

Tax Services 267.19

Miscellaneous 69.52 27,041.99

Cash Balance—On Deposit

\$ 5,585.75

Stipulation re Record on Appeal

Amount Required for 1½% Interest Disbursement on First Mortgage bonds \$ 4,275.00
 Unpaid Taxes
 1929 taxes including Interest to 12-31-35 \$3,478.75) Payable \$2,833.36 in 1936) Plus in-
 1930 taxes including Interest to 12-31-35 3,604.62) 2,125.00 in 1937) terest
) 2,125.01 in 1938) from
 12-31-35
 2nd ½ 1934 1,551.07 (Paid February 17, 1936)

754 FEDERAL FACILITIES REALTY TRUST

100 West Monroe Street
 Telephone, Dearborn 8666
 Chicago

Chicago Post Office Service Station	North Halsted Post Office
Columbus Parcel Post Station	Quincy Station Post Office
Station "D" Post Office Building	Roseland Station Post Office
Dallas Parcel Post Station	U.S. Service Station, St. Louis
Ferry Station Post Office	South Side Service Station
Irving Park Post Office	22nd Street Station Post Office
McKinley ark Station	Villa Garage

December 21, 1936.

Mr. Jos. Baumann,
 S. Baumann & Bro.,
 553 Sixth Avenue at 15th St.,
 New York, New York.

Dear Joe:

I am enclosing herewith check to your order for \$45.00 in payment of the Twenty-Second Street Station Building Corporation coupons which fell due December first.

We have filled in an ownership certificate showing that this income is being received by you. If, however, it is for another account will you so advise me so that our records may be changed thereon.

I am very happy to know that Mozette is somewhat improved and hope that the new year will bring her a lot of good health.

Wishing you and yours a very Merry Christmas and a prosperous New Year, I am,

Sincerely,
(s) Myrtle

MJ:EA

755

Dearborn 8670

COLONIAL SECURITIES COMPANY
100 West Monroe Street—Suite 1811
Chicago

August 26, 1938

Mr. Joseph Baumann,
c/o Baumann & Bros.,
553 Sixth Avenue
New York, New York

Dear Joe:

Your letter of August 23rd, with enclosures, has been received.

I am enclosing herewith check for \$576.00 to your order, being the balance due you in the bond transaction, the statements for which and the registered bonds I will send to you Wednesday or Thursday as soon as they are received from the Trustee who is to register them.

I appreciate that the enclosed check will be helpful and I think was a good way to meet the situation at this time.

Valerye is leaving for Birmingham with her husband tomorrow as Frank's uncle seems to have a prospective opening for him in the law business, which may mean they will move from Chicago. Of course, Frank's future is the most important thing to consider although it will be a great loss to us to have them leave Chicago. It will depend entirely on Frank's reaction to the situation after they have gone into details when in Birmingham.

I hope this letter finds every one real well and with my best as always, I am

Sincerely,
(s) Myrtle

MJ:EA

644

Stipulation re Record on Appeal

756

Dearborn 8670

COLONIAL SECURITIES COMPANY
100 West Monroe Street—Suite 1811
Chicago

August 22, 1938.

Mr. Joseph Baumann,
S. Baumann & Bros.,
553 Sixth Ave., at 15th Street,
New York, New York.

Dear Joe:

I have your letter of August 19th and you may rest assured that I would not have suggested the exchange of securities for you unless I saw some special possibility in connection with the securities which I had recommended in place of the ones you are holding.

I am very hopeful of putting over the refinancing program which would put me in a position to take the bonds up at 40 and I figured I could always repurchase the Austin bonds if I thought it advisable at that time. Therefore, would suggest that you ship the bonds to me as I suggested, together with information as to registration. Upon receipt of same I will send you a check for the balance due in the transaction and have the Crandon bonds registered which will take a few days.

Even though I do not work out the refinancing, I was very conservative in your return on the bonds as I wouldn't be surprised but what they will pay more than 1% during the next two years.

Thanks for the kind remarks about my family and I hope that one of these days you will be in Chicago when you will have an opportunity to get better acquainted. The rest of my family have been fairly well although the baby had an accident two weeks ago and broke his right arm. He is, however, getting along nicely and the fact that it is in a cast does not seem to hinder him very much.

With best wishes as always, I am

Sincerely,

(s) Myrtle

MJ:EA

757

Dearborn 8680

COLONIAL SECURITIES COMPANY
100 West Monroe Street—Suite 1811
Chicago

August 12, 1938

Mr. Joseph Baumann,
553 Sixth Avenue at 15th Street,
New York, New York.

Dear Joe:

You will recall that in May, 1935, I had you sell \$7,000 McKinley Park Station bonds and take in lieu thereof \$5,400 Austin Station, \$3,500 Rogers Park Station and \$2,000 Ogden Park Station bonds. Our transaction at that time has worked out very favorably for you as the McKinley Park Station bonds are currently bid at 15 since the Government moved out of the building and we have only one tenant in the building using one-half of it paying just a little more than sufficient to take care of operating expenses and taxes, so that no interest is being paid on McKinley Park Station bonds, whereas the other bonds are now all paying 3% interest.

If you were to sell the bonds which I gave you in exchange for McKinley Park Station you could realize \$3,851 cash against \$1,050 if the McKinley Park Station bonds had been retained.

I have another suggestion to make at this time which may likewise prove very profitable and I think would work out advantageously for you. That is that the \$5,400 Austin Station bonds be sold at 44 flat realizing \$2,376 and that the \$2,000 Ogden Park bonds be sold at 30 which would bring \$600 making a total of \$2,976 cash you would realize from these two securities.

It is not my thought right now, however, to sell Rogers Park Station bonds. With the proceeds of the \$5,400 Austin Station and the \$2,000 Ogden Park, I propose to sell you \$8,000 of the 6748 Crandon Avenue Building Corporation First Mortgage bonds which are on the 39 apartment building at 68th and Crandon Avenue for which you recently sold us some carpeting. The Crandon Avenue building bonds are now paying only 1% interest due to the fact that all repairs, carpeting, stoves and refrigeration have been charged up as expenses and not as a capital invest-

ment and we have had some installments of protested taxes to take care of. The unpaid balance on these taxes, however, will be paid in full by the end of 1939, after which interest payments, I believe, will be 3%, so that you would receive \$240 annually from the bonds in place of \$222 which you are now receiving from the Austin Station and Ogden Park Station bonds. The \$8,000 Crandon Avenue building bonds, however, would cost you only \$2,400 and you would receive credit of \$2,976 so that you would have \$576 cash refunded to you at this time which would more than offset the loss of interest between the 1% you would receive on the Crandon Avenue building bonds for the two years and the 3% you are now receiving on the Austin and Ogden Park Station as the difference of 2% on \$7,400 of bonds per year would be \$148 per annum or a total of \$296, whereas you would get back cash at this time of \$576.

758 I do not have any additional Crandon Avenue building bonds or I might suggest that you take the \$576 and add \$24.00 to it so that you would have \$10,000 of same, in which event your interest return would be greater.

However, I do have some of the units on Parkview Manor which are available at the same price and if you decide you don't want the \$576 and wanted to add \$24.00 to it we could add two units of the Parkview Manor.

There is also another feature in connection with the Crandon Avenue building bonds which I want to mention at this time, that is if you decide to follow my suggestion, I want to have an option to buy the bonds back from you for the Corporation at a price of 40 for a period of not over one year. The reason for this is that if we can get the bondholders to accept 40c on the dollar for their bonds, we can secure an insurance company loan which would permit us to pay off the bonds at that price, in which event you would have a profit on the eight bonds of \$800 plus interest that is paid while you hold same plus the \$576 offered you above.

While there is a ten year lease to run on the Austin Station it makes those bonds worth more than Ogden Park for the Ogden Park lease to the Government only runs until June 30, 1939, and what the Government will do beyond that time it is hard to say. We may be confronted with the same proposition as we were on the McKinley Park Station.

I would appreciate your letting me hear from you in this matter at an early date and want you to know that in making the transaction there is going to be a profit to the Colonial Securities Company. It is only due, however, to the fact that I am taking the Austin Station bonds at a higher price than is being bid for them at this time that the transaction can be worked, otherwise it would not be possible for me to handle the bonds in this way and pay you the cash which you may be able to use to good advantage now and yet not jeopardize your principal.

If you decide to follow my suggestion, you may ship the bonds to me by registered mail and advise me in whose name you will wish the other bonds as they are registered bonds and will have to be registered before being sent.

I trust this letter finds you real well and awaiting your advice in the matter, I am

MJ:MS

Sincerely yours,
(s) Myrtle

759

NATIONAL REALTY TRUST
Suite 1807, 100 West Monroe Street
Telephone, DEArborn 8666
Chicago

Armour Station Post Office	Station
Austin Station Post Office	La Grange Post Office
Building	Building
Berwyn Post Office	U.S. Service Station, Los
Crandonshore Building	Angeles
Division and La Vergne Post	Ogden Park Post Office
Office	Building
Station "F" Post Office	Parkview Manor Building
Grand Rapids Parcel Post	Rogers Park Post Office
	Building
	Windsor Shore Station
	Building

August 21, 1942

Mr. Joseph Baumann
care S. Baumann & Bro.
6th Avenue at 15th Street
New York, New York

Dear Joe:

I have your letter of August 19th and I don't blame you for dropping me a line and asking if something cannot be done either towards interest or principal of your note. However, there is nothing that can be done at this time. Your note being secured by the stock of the National Realty Trust is now in court and has been for nearly two years. We hope that sometime this year it might come to an end.

For your information the buildings in the National Realty group have considerably improved due to the fact that there are many buildings in the National Realty group that are apartment buildings and the demand for apartments has been improved in the past four or five years and we hope that they will continue to do so; but this ceiling that was put on rents has just put a setback to all apartment buildings and of course same will not fare as well as it did. We owed a great deal of money on back taxes on most of the apartment building properties due to the fact that rents were very low and taxes were high. During the last few years we were fortunate enough to pay up most of our back taxes and improved the buildings with new equipment, such as refrigerators, stoves, carpet in halls, new roofs on buildings, and yet in most cases were able to pay something on the First Mortgage bonds which, of course, helps the stock back of the bonds and the National Realty Trust owns a great deal of those bonds and some day I hope that the stock that you have as collateral will be worth a great deal more than the amount we owe you.

You say that you have heard that I am doing very nicely in my present position. I want you to know exactly what I am doing. I am kept busy managing all the buildings, trying to save a nickel here or there in order that our bondholders may receive some interest, if at all possible, and keep the buildings up to the best of my ability with as little expenditure as possible. It is true I have accomplished my point in San Francisco and have leased the building at a decent rental although I had to spend considerable money to rehabilitate the building in order to make it suitable to be used as a medical unit for the Navy, but by staying on the job and looking after it myself I did the work in practically six weeks by being on the job every morning at 7:00 o'clock and staying on the job until 4:00 o'clock every day, which meant that while moving 30,000

bales of cotton out of the building I must simultaneously do my remodeling.

Of course you can appreciate a building that has been occupied for fifteen years and that has had very little attention due to the fact that the same tenant was in there 760 and the very fact that I stored 30,000 bales of cotton in the building for a year didn't improve conditions in the building while the cotton was in there and I had some job on my hands. I paid as high as 90c for common labor per hour and as high as \$2.25 to mechanics per hour but that wasn't it. The real problem was to get the labor as well as the mechanics. You must appreciate that San Francisco is a very vulnerable spot and since December 7th people in the east probably have no conception of what the government is doing out there. For your information the Alameda air base which is located across the bridge from San Francisco near Oakland as well as the Mare Island ship building unit are just tremendous. It is impossible for any one to appreciate the magnitude of those places that are being built and you know in these times wages are high and labor as well as mechanics are scarce.

Mr. Kahn, of MacDonald & Kahn who erected the building for us originally, is a very good friend of mine. He has always found me 100% and I have always tried to deal with him in a satisfactory manner and there wasn't anything within reason that I couldn't accomplish through that office. To give you an idea, I spent close to \$50,000.00 on remodeling the building and removing the 30,000 bales of cotton and the corporation didn't have 50c to do it with nor can you go out and borrow money on a government lease that can practically be canceled on thirty days notice and you know that labor and material today are cash; pay day is every Friday. I got the firm of MacDonald & Kahn to put out all the money for me in advance and wait for it until I could get it from the government in the form of rents in order to pay it back.

This firm had, when I was there, close to two billion dollars worth of defense work for they are building ships and planes and everything imaginable. They couldn't see how the building could ever be ready for the Navy in less than four months and they also couldn't see how the cost could be less than about \$75,000.00 but that wasn't satisfactory to me. I had to get rent as quickly as possible and my

proposition was made on December 31st and by being on the job and keeping after them it was accepted on January 9th and on the night of January 9th I started to work. I believe it was on a Friday and on Monday morning I had over 100 people on the job and stayed right with it until an hour or two before my train left which was February 18th, if I remember rightly, and by using everything that I had in the building that I could use instead of buying new we saved \$25,000.00 in remodeling but we also got between \$15,000.00 and \$20,000.00 in rent which we wouldn't have gotten if I had left it to other people to worry about instead of staying on the job myself.

However, we are receiving rent as of February 7th so it was a good job and a good accomplishment, yet I worked very hard, ruined two suits of clothes, an overcoat, shoes and hats for every afternoon when I left the building my clothes as well as my hair were full of plaster and mud and during all this time it rained in San Francisco for five solid weeks. However, Joe, there is nothing personally that I get out of it. It is all for the bondholders. All I get is \$300.00 a month for looking after the building, so you can appreciate I have nothing to do with the funds that are being collected from the building. Same is handled by Mr. Darrow who is appointed here by the court and we are all trying to do a good job, but as far as having 761 any money to pay you on your note, either principal or interest, it would have to be received from the National Realty Trust and while, as I said before, they are in much better shape today than they were ten years ago, we all seem to have to wait and some day you will find that the securities you are holding will pay you back every penny that you have loaned.

With reference to my being offered a job, of course Mr. Kahn being a friend of mine when I went in to bid him goodbye said he couldn't believe I had the building done in the length of time that it took but he said he was very glad to see me leave town as I had disrupted many of his jobs by taking labor and material which were needed for other jobs and in probably a joking way he said, "I need men like you", but at my age you can appreciate that many younger people who have more knowledge of the building business, for it isn't just building buildings it is mechanical work of which I have very little knowledge, would be better

suited for the job. What I am trying to do is to keep my health and go along with what I am getting and be satisfied with it until such time as there is improvement all around, and I am looking forward to the day it will.

I certainly agree with you and I think you are 100% right that you don't need as large an apartment and that if you had a smaller apartment you wouldn't need the help that you now have, and that by all means your daughters should go out and get a job and go to work like everybody else. There is plenty of work to be done; plenty of jobs to be had and girls that have had the education that your daughters have received should have no hardship in going out and getting a job and helping in times like these.

I recently rented an apartment to the head man of the Social Security Board of this district and I talked to him about the New York office, whether my granddaughters would have an opportunity of getting jobs and he sent me a letter and I believe Myrtle sent the letter to Mozette. Those jobs pay from \$105.00 to \$120.00 a month and you don't have to be civil service in order to get them, and I certainly hope that if Marahlea as well as Jane get jobs they will be far better off if they do.

I can appreciate what you tell me about your business but Joe it seems to me that the laboring class of people that buy furniture on time have never in the history of this country made as much money as they are making now and worked as steadily as they are working now and it seems to me that the furniture business ought to improve some due to those facts. I hope that you will bear with me and believe me when I say that as far as your note is concerned, you have just got to wait.

I trust that this will find you, Mozette and the children in the best of health as well as your mother and sisters.

(s) Uncle Jack

JK:MB

762 FEDERAL FACILITIES REALTY TRUST

29 South La Salle Street
 Telephone, Dearborn 8666
 Chicago

Chicago Post Office Service
 Station
 Columbus Parcel Post
 Station
 Station "D" Post Office
 Building
 Dallas Parcel Post Station
 Ferry Station Post Office
 Irving Park Post Office
 McKinley Park Station

North Halsted Post Office
 Quincy Station Post Office
 Roseland Station Post Office
 U.S. Service Station,
 St. Louis
 South Side Service Station
 22nd Street Station Post
 Office
 Villa Garage

September 26, 1935.

Notice to Holders of securities purchased from
 Jacob Kulp & Company

In the interest of economy we are moving our present quarters on September 30th to Suite 1807, 100 West Monroe Street, being the northwest corner of Monroe and Clark Streets.

If there is any information you desire pertaining to your securities we will be glad to have you call at our offices, when you are in Chicago, where full details will be available at all times.

Very truly yours,
 Paul E. Darrow,
 Trustee,
 Federal Facilities Realty Trust
 National Realty Trust.

Stipulation re Record on Appeal

653

763

NATIONAL REALTY TRUST
Suite 1807, 100 West Monroe Street
Telephone, DEArborn 8666
Chicago

Armour Station Post Office
Austin Station Post Office.
Building
Berwyn Post Office
Crandonshore Building
Division and LaVergne Post
Office
Station, "F" Post Office
Grand Rapids Parcel Post
Station

LaGrange Post Office
Building
U. S. Service Station,
Los Angeles
Ogden Park Post Office
Building
Parkview Manor Building
Rogers Park Post Office
Building
Windsor Shore Station
Building

December 16, 1941

Miss Ann Botthof
S. Baumann & Bro.
6th Ave. at 15th St.
New York City

Dear Miss Botthof:

We enclose check to the order of Marahlea Baumann in the sum of \$77.40 and Jane Baumann in the sum of \$18.90 in payment of interest coupons of the Park View Manor Building Company enclosed with your letter of November 21st.

Very truly yours,
Park View Manor Building Company
/s/ Paul E. Darrow

J:PED:VMC

764

August 5th, 1936.

Miss Myrtle Johnson,
Federal Facilities Realty Trust,
100 West Monroe Street,
Chicago, Ill.

Dear Myrtle:

Thru some oversight I omitted to send you the \$5,000. bonds No. 193-197 inclusive, of the South Side Post Office Service Station, but am herein enclosing same, together with a \$100. bond No. 47 of the same issue, belonging to Miss Botthof. These are being forwarded via registered mail.

654

Stipulation re Record on Appeal

On receipt of these bonds I trust you will mail a check for the interest and return the bonds as soon as possible.

With kindest regards, I am

Sincerely,

JB/AB

Enc. (6)

765

September 1st, 1936.

Miss Myrtle Johnson,
c/o National Realty Trust,
100 West Monroe St.,
Chicago, Ill.

Dear Myrtle,

I am herein returning the receipts for the Twenty-Second Street bonds, duly signed; also ownership certificates covering the interest on the South Side Bonds belonging to Marahlea, and Miss Botthof.

With kindest regards, I am,

Sincerely,

JB/AB

Enc. (4)

766

May 20th, 1946.

Miss Myrtle Johnson
100 W. Monroe St.
Chicago 3, Ill.

Dear Myrtle:

In reply to your letter of May 16th, desire to state that I have 10,000 shares of National Realty Trust; five certificates of 2000 shares each numbering from 131 to 135 inclusive.

Trusting this is the information you desire, I remain

Sincerely,

JB*IS

767

Dec. 23, 1936.

Miss Myrtle Johnson
c/o Federal Facilities Realty Trust
100 West Monroe Street
Chicago, Ill.

Dear Myrtle:

Your letter of the 21st at hand and contents noted, and in reply desire to state that the three bonds for which you have mailed me an interest check, belong to Jane and not to me.

Kindly correct the ownership certificate and mark your records accordingly.

Very truly yours,

JB:MA

768

August 19th, 1938.

Miss Myrtle Johnson,
100 West Monroe St.,
Chicago, Ill.

Dear Myrtle,

Yours of the 12th at hand and have been studying same over very carefully before answering it. While it is true that the 2M Ogden Park bonds may discontinue paying interest after next year, nevertheless the Austin Station bonds, amounting to \$5,400. are good for at least another ten years. The Crandon Avenue building bonds are nothing more or less than a real estate venture and while you state that there are thirty-nine apartments in this building, nevertheless, the Post Office securities have a greater intrinsic value, wherein the Crandon Avenue Building is a gamble. Do not get me wrong; I have great confidence in your ability, integrity and good sound judgment and if I have your assurance that the swap, as suggested by you, is a safe investment, I am willing to be guided by your advice. My principal reason for writing you before accepting your suggestion is to be sure that I am not making a mistake. If your advice is in the affirmative, I will, following your suggestion, take a cash check, together with the 8M Crandon Avenue bonds.

I need not tell you how glad I was to meet both Frances and Gil and enjoyed their company very much. He seems like a swell chap and your sister-in-law is certainly a lovely

girl. I was ~~only~~ too sorry that we could not spend more time with them and hope you will extend my kindest regards to them the next time you see them.

With kindest regards to the rest of the family, I am,
Sincerely,

JB/AB

769 \$80,000.00

New York, June 2nd, 1930.

One (1) year after date for value received, the undersigned promise to pay to Joseph Baumann, or order, at his office in the City of New York, in funds current at the New York Clearing House, Eighty Thousand 00/100 Dollars, with interest at the rate of prevailing per cent per annum and the following is hereby deposited with said Joseph Baumann, as collateral security, for the payment of this and any other liability or liabilities of the undersigned, or of the guarantors hereof, or which may hereafter be contracted or existing, due or to become due to, or held or to be held by, said Joseph Baumann, viz.:

All of the stock of the Crandon Shore Building Corp., Chicago, Ill.

All of the stock of the Austin P. O. Building, Chicago, Ill.

All of the stock of the Rogers Park P. O. Building, Chicago, Ill.

All of the stock of the Windsor Park P. O., Chicago, Ill.

All of the stock of the Grand Rapids Parcel Post Bldg., Grand Rapids, Mich.

All of the stock owned by Jacob Kulp of the U. S. Parcel Post Bldg., Cleveland

of an estimated market value of

..... Dollars, and said Trust Company is also given a lien for the amount of all said liabilities upon all property or securities now or hereafter given unto, or left in the possession or custody of said Trust Company by or for account of the undersigned, or in which the undersigned may have any interest (all remittances and property to be deemed left with said Trust Company, as soon as put in transit to it, by mail or carrier), and also upon the balance of the deposit account of the undersigned with said Trust Company existing from time to time.

The undersigned shall deliver to said Trust Company additional collateral satisfactory to it whenever called for

by it, so that there will, at all times, be with said Trust Company a margin of security satisfactory to it; and in case of failure so to do forthwith, this note (and, at the option of said Trust Company, all other said liabilities) shall become at once due and payable without demand of payment hereof, and upon non-payment, or non-fulfillment of any term, of this note or of any of said liabilities, then this note or any of said liabilities or any designated part thereof shall become immediately due and payable at the option of said Trust Company on presentation hereof or thereof, or of said part, for payment, and should this note or any of said liabilities become immediately due and payable as herein provided, said Trust Company may immediately sell and apply said property or securities in the manner and with the effect hereinafter provided.

Said Trust Company is hereby authorized and empowered at its option at any time to appropriate and apply to the payment and extinguishment hereof and/or of any other of said obligations or liabilities, whether now existing or hereafter contracted, any and all moneys, or other property or proceeds thereof, now or hereafter in the hands of said Trust Company or deposit or otherwise for account of, to the credit of, or belonging to, the undersigned, whether this note, said obligations or liabilities are then due or not due. In the event of the insolvency of, or the appointment of a receiver of the property of, or an assignment for 770 the benefit of creditors of the undersigned, this note and all said obligations and liabilities shall become and be immediately due and payable without demand or notice.

Said Trust Company is hereby authorized, upon the non-payment of any of said liabilities when due, to sell, assign and deliver the whole of said securities or from time to time any part thereof, or any substitutes therefor, or any additions thereto, or any other securities or property at any time given unto or left in the possession or custody of said Trust Company by or for the undersigned or in which the undersigned may have any interest, at any Brokers' Board, or at public or private sale, for cash, upon credit or for future delivery, all at the option of said Trust Company, or any of its officers, without either advertisement or notice, which are hereby expressly waived.

Upon any sale or sales at public auction or Brokers' Board or Exchange above provided for, said Trust Company, or the holder hereof, may bid for and/or purchase

the whole or any part of such securities or property, free from any right of redemption, which is hereby waived and released.

In case of any sale by said Trust Company, of any of said securities or property on credit or for future delivery, the securities and property sold may be retained by said Trust Company until the selling price is paid by the purchaser, but said Trust Company shall incur no liability in case of failure of the purchaser to take up and pay for the securities or property so sold. In case of any such failure the securities or property may be again sold.

In case of sale for any cause, after deducting all costs or expenses of every kind for collection, sale or delivery, said Trust Company may apply the residue of the proceeds of the sale or sales so made to pay either one or more or all of said liabilities to said Trust Company, including this note, whether then due or not, as it shall deem proper; making proper rebate for interest on liabilities not then due and returning the overplus, if any, to the undersigned, who agree to pay and to be and remain liable to said Trust Company for any deficiency, with legal interest, arising upon such sale or sales.

Upon any transfer of this note, said Trust Company may deliver the property held as security, or any part thereof, to the transferee, who shall thereupon become vested with all the powers and rights given to said Trust Company in respect thereof, and said Trust Company herein shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter. Said Trust Company may pledge any of said security, either alone or mingled with other securities to the United States or to the Federal Reserve Bank, to secure deposits or other obligations of said Trust Company, whether or not such liability of said Trust Company be in excess of the liability of the undersigned to said Trust Company.

Calls for collateral or any notices to the undersigned may be made or given by said Trust Company by leaving same at the address given below or the last known address of the undersigned or by mailing same to such address, with same effect as, if delivered to the undersigned in person.

Jacob Kulp & Co. by Jacob Kulp & Co. /s/
Address 33 So. LaSalle St., Chicago, Ill.

Personally guaranteed by Jacob Kulp
Jacob Kulp /s/

In consideration of the making at the request of the undersigned of the loan evidenced by the within note upon the terms thereof, and of the sum of one dollar, the undersigned hereby guaranteed to The New York Trust Company, its successors, endorsees, or assigns, the prompt payment of the said loan when due, and hereby consent to the terms and conditions of said loan and that the securities pledged as collateral for the said loan may be exchanged or surrendered in whole or in part, from time to time, or the time of payment of the said loan or any of the securities therefor extended, or the rate of interest changed, without notice to or further assent from the undersigned, and that the undersigned will remain bound upon this guarantee notwithstanding such changes, surrender or extension. The undersigned waive demand of payment from maker of said note, and also waive notice of non-payment of the said loan or note, and also waive notice of any sale of the collateral securities held for the said note.

7/11/30	\$5000.	—	plus int.
8/12/30.	5000.	—	plus int.
6/26/31	15000.	—	
6/ 2/32	2500.	—	
8/ 2/32	2000.	—	
9/12/32	500.	—	

772

April 26, 1930

Received of Mozette Baumann, the following securities:

	Market Price
200 shares common stock, Electric Bond & Share Company	108 1/4
400 shares common stock, General Electric Company	90
\$2,000 Parkview Manor Building Company 7% First Mortgage Bonds due 1938	\$30 per hundred
\$2,000 Irving Park Station 6 1/2% First Mortgage bonds due 1935	\$30 per hundred
\$9,000 Columbus Parcel Post Building 6 1/2% First Mortgage leasehold bonds due 1947	\$45 per hundred

I hereby agree in consideration of said securities being delivered to Jacob Kulp & Co. for the use and benefit of said

660.

Stipulation re Record on Appeal

Jacob Kulp & Co. that I will guarantee redelivery of the same amount of securities or in lieu thereof the market value of same, as indicated opposite the respective securities, and guarantee the payment of the income from said securities less any amount which may be advanced by Jacob Kulp & Co. or by or for me on its behalf.

This agreement shall be binding on my heirs, executors or assigns.

Jacob Kulp /s/

773 Telephone Dearborn 8666
33 South La Salle Street
Chicago

April 26

Dear Bab:

Just received note you sent and it is needless to say that I tink it is the most nobel ting of you to do. I sertenly apresit it and I don't want you to worry. You may rest asured that som day if I live I will mak up for it. Myrtel as been gone all week in St. Pall and she will not be bak until the last of next wek but will hope everyting will com out OK with God's help. Love to you and Marly and Jan and tank you 1000 times.

Lovingly,

Uncle Jack

774 COPY

MYRTLE JOHNSON
100 W. Monroe Street
Chicago

COPY

April 14, 1941

Mrs. Joseph Baumann
601 West End Avenue
New York City

Dear Mozette:

Your various letters were received, and I assure you I was not ignoring them. I thought Mr. Kulp had told you I was having a complete report made on the various stocks, or otherwise, as to dividends paid, and any changes so that I could work this matter out to your mutual satisfaction. It happens, however, that the statistician who was to give me the information from the brokerage house has been

laid up for the last two weeks, and is not expected back on the job before Wednesday or Thursday, after which I will get all the information. I assure you I had no intention of ignoring it. Just as soon as I get this data together I will set the whole thing up so that we will both have complete information.

By the way, I presume you have a receipt or something from Mr. Kulp. Will you be good enough to send me a copy of it so that I may work from that?

I saw your mother yesterday for the first time since her return and to be candid with you I do not think she looks so very well. Of course, I did not tell her that. Frank and I went over yesterday noon and she was doing up some dishes after having gotten a little lunch on their return from Temple. She said she felt a lot better, but she certainly did not look it. Of course, we are all getting older and she lost so much weight during her illnesses so that she seems so little. Maybe it was my imagination, but she seemed different. Her spirits are very good and she seems quite cheerful with the results that have been accomplished and said the doctor told her it would be some time before her arm would be alright. I understand she gained four pounds, and surely that is in her favor. I will keep you posted as to how she is from time to time.

As for my family they are all going along. Everyone was home for the Easter holiday yesterday and we had a lot of other guests, so it was a big day. Valerye's children are both well again, and she is feeling very well. Of course, she will be glad to have the period between now and July 10th pass quickly.

The weather in Chicago is delightful, and I am only hoping it will last a little while as we have had a long miserable winter.

With kind regards, as always to you and yours, I am

Sincerely yours,

Myrtle /s/

MJ:VC

662

Stipulation re Record on Appeal

775 COPY

COPY

THE BANK OF UNITED STATES
Member of Federal Reserve System
New York

April 24, 1930

Mr. Jacob Kulp,
c/o Jacob Kulp & Co.
33 So. La Salle Street,
Chicago, Illinois
Dear Sir:—

Pursuant to our conversation, enclosed herewith you will find the following stocks and bonds:

- 200 sh. Electric Bond and Share Co.
No. TNY 37108-37109
- 400 sh. General Elec. Co. Common
No. NYC 117935-6-7-40
- 2M Park View Manor Building 7s 1938
No. D 855-856-M-1051
- 2M Irving Park Station Chicago Post
Office Building
6½s 1935 No. 126-127
- 9M State of Ohio Columbus Parcel Post Bldg.
6½ 1947 No. 491-2-3-4-5- No. 501-2-3-4

Kindly acknowledge receipt.

Yours very truly,

776 COPY

COPY

THE BANK OF UNITED STATES
Member of Federal Reserve System
New York

April 24, 1930

The Bank of United States,
91st St. & Broadway
New York City

Gentlemen:

I hand you herewith the following stocks and bonds to be sent by registered mail and insured to Mr. Jacob Kulp, c/o Jacob Kulp & Co., 33 So. LaSalle St., Chicago, Illinois.

- 200 sh. Electric Bond & Share Co.
No. TNY 37108-37109
- 400 sh. General Elec. Co. Common
No. NYC 117936-6-7-40

Stipulation re Record on Appeal

663

2M Park View Manor Bldg 7s 1938
No. D855-856 M1051

2M Irving Park Station Chicago
Post Office Bldg 6½ 1935
No. 126-127

9M State of Ohio Columbus Parcel
Post Bldg. 6½ 1947

No. 491-2-3-4-5- No. 501-2-3-4

Yours very truly,

4/24/30

Received above mentioned
Stocks and Bonds.

The Bank of U. S.
George C. Feist /s/
Mgr.

177 3. That the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, is hereby authorized and directed to include in the record on appeal of Paul E. Darrow in this cause to the United States Court of Appeals for the Seventh Circuit and on any crossappeal in this cause to the United States Court of Appeals for the Seventh Circuit the originals, in lieu of copies, of the following exhibits in connection with the said hearings before Special Master Archie H. Cohen:

(a) Exhibits 3 and 4 of the Securities and Exchange Commission.

(b) Exhibits 7 to 12, both inclusive, of

Paul E. Darrow, Former Trustee.

Dated: June 29th, 1949.

Deming Jarrett & Mulfinger
Attorney for Stacy C. Mosser,
Successor Trustee herein.

Jacob B. Courshon
Attorney for John W. Guild,
Successor Trustee under In-
denture of Mortgage.

Thomas B. Hart

J. Kirk Windle

John Is Mayer

Attorneys for Securities and
Exchange Commission.

Irving Herriott

Urban A. Lavery

Attorneys for Paul E. Darrow,
Former Trustee.

897 And on the same day, to wit, on the 1st day of July, 1949 being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy, District Judge, appears the following two (2) entries, to wit:

900

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

• • Caption—No. 58334-58335 • •

ORDER

This matter coming on to be heard on the motion of Paul E. Darrow, appellant, regarding stipulation dated the 29th day of June, 1949 in regard to record on appeal, and it appearing to the Court that due notice of the hearing on said motion has been given to all parties entitled to such notice,

It Is Therefore Ordered:

1. That said stipulation be and the same is hereby approved;

2. That the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, is hereby authorized and directed to treat and regard the copies of

(a) Exhibits 3 of April 10, 1946, 3a of April 10, 1946, 3b of April 10, 1946 and 3c of April 10, 1946 of Stacy C. Mosser, Successor Trustee herein;

(b) Exhibits 2, 2a and 4 of Paul E. Darrow, Former Trustee;

901 (c) Exhibit I as of November 1, 1946 of John W. Guild Successor Trustee under Indenture of Mortgage;

(d) Objection of John W. Guild as Successor Trustee under Indenture of Mortgage dated October 1, 1929, issued by the Debtor, Federal Facilities Realty Trust, to the Final Report and Account as supplement of Paul E. Darrow, Trustee;

(e) Stipulation by and between the above parties, by their respective attorneys of record, that Joseph Baumann received through the United States mail certain documents, that Joseph Baumann wrote and

forwarded by United States mail to Myrtle Johnson certain letters, of which copies were produced by the said Joseph Baumann, that Joseph Baumann produced certain documents and that copies of certain documents enumerated in said stipulation are attached to the stipulation and shall be received in evidence, subject to the approval of the Court and subject to objections on the grounds of relevancy and materiality; and

- (f) Copies of documents referred to in paragraph IV of the aforesaid stipulation described in paragraph 1(d) of the present stipulation;

which copies are contained in said stipulation, as originals, in compiling and preparing the record on appeal of Paul E. Darrow in this cause to the United States Court of Appeals for the Seventh Circuit and on any cross-appeal in this cause to the said United States Court of Appeals for the Seventh Circuit; and

3. That said Clerk is hereby authorized and directed to include in the record on appeal of Paul E. Darrow in this cause to the United States Court of Appeals for the Seventh Circuit, and on any cross-appeal in this cause to the United States Court of Appeals for the Seventh Circuit, the originals, in lieu of copies, of the following exhibits in connection with the hearings before Special Master Archie H. Cohen:

902 (a) Exhibits 3 and 4 of the Securities and Exchange Commission;

- (b) Exhibits 7 to 12, both inclusive, of Paul E. Darrow, Former Trustee.

Enter:

Walter J. LaBuy,
Judge.

Dated: July, 1949.

Examined and recommended for entry:

Martin Ward,
Special Master.

Dated: June 30, 1949.

903

United States of America } ss:
Northern District of Illinois

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Stipulation as to Consolidated Record on Appeal filed in this Court in the matter of: Federal Facilities Realty Trust, a Common Law Trust, No. 58334 and in the matter of: National Realty Trust, a Common Law Trust, No. 58335, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office, excepting certain original exhibits, etc., incorporated herein by direction of this Court pursuant to Stipulations of the Parties.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 5th day of July, 1949.

Roy H. Johnson, Clerk
By Gizella Butcher,
Deputy Clerk.

(Seal)

904

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

• • (Caption—Nos. 9935-9936) • •

STIPULATION IN REGARD TO PRINTING TRANSCRIPT OF RECORD

It Is Hereby Stipulated and Agreed by and between the parties hereto, namely; Paul E. Darrow, former trustee, as appellant in cause No. 9935 and cross-appellee in cause No. 9936, and John W. Guild, successor trustee under indenture of mortgage, as appellee in cause No. 9935 and cross-appellant in cause No. 9936, and Securities and Exchange Commission, as appellee in both causes, and Stacy C. Mos-

ser, successor trustee, as appellee in both causes; by their respective attorneys as follows:

905 That the following portions of the Original Transcript of Record in the aforesaid causes filed in this Court may be omitted from the Printed Transcript of the Record on the appeals in the aforesaid causes on the ground that such portions are irrelevant and immaterial to the issues in these appeals:

1. Omit the last three pages of the record of Archie H. Cohen, Special Master, on the final report and account of Paul E. Darrow, former trustee herein, etc., which three pages contain only a list of the documents and papers which it is hereby stipulated were duly transmitted by the said Special Master to the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division (hereinafter referred to in this stipulation as the "District Court Clerk"), along with the aforesaid report and the first of which three pages bears the notation at the top "Papers transmitted herewith."

2. Omit the Transcripts of Proceedings had before the Honorable Archie H. Cohen, Special Master, commencing on October 25, 1944, to and including May 28, 1947, contained in three separate volumes, pages 1 to 2523, both inclusive, referred to in certificate of the District Court Clerk as having been filed with said Clerk on April 28, 1948. The Abstract of Record of said proceedings referred to in said certificate as having been filed with said Clerk on April 28, 1948 shall be printed and form a part of the Printed Transcript of the Record on the appeals herein in lieu of said Transcript of Proceedings contained in said three volumes, except omit the last seven pages of said Abstract on which Exhibits are tabulated. It is further stipulated that on page 144 of said Abstract with reference to page 1591 of the Original Transcript of Proceedings referred to in the margin of said page 144, the figure of \$50.00 in regard to 906 the loan to Baumann should read \$50,000, and that on page 158 of said Abstract with reference to page 1727 of the Original Transcript of Proceedings referred to in the margin of said page 158, the figure of \$307,000 in regard to the rental from the Government should read \$107,000.

3. Omit the following exhibits of the Securities and Exchange Commission:

Nos. 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20.

4. Omit the following Exhibits of Paul E. Darrow, former trustee:

- (a) Exhibits Nos. 11 and 12 on which said Paul Darrow is described as respondent.
- (b) Exhibits Nos. 2, 2a, 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2k and 2l, 3, 4 and 5, all of March 18, 1947, on all of which said Paul Darrow is described as "Darrow,"
- (c) Exhibits Nos. 1, 2, 3, 4, 5 and 6, all of March 28, 1947, on both of which said Paul Darrow is described as "Darrow,"
- (d) Exhibits Nos. 1 and 2 of May 28, 1947, on both of which said Paul Darrow is described as "Darrow," and
- (e) Copies of Exhibits Nos. 2 and 2a of Paul E. Darrow, former trustee, which Exhibits are contained in and form a part of the stipulation dated June 29, 1949, but the balance of said stipulation shall not be omitted from printing.

5. Omit the Second Notice of Motion and the Second Motion following the certificate of the District Court Clerk that two notices of motions and two motions were filed with said Clerk on July 1, 1949, it being further stipulated that said Second Notice of Motion and said Second Motion refer to the stipulation described in paragraph No. 6 of the present stipulation.

6. Omit the stipulation dated June 30, 1949 in regard to a true and correct copy of the Transcript of an Adjourned Hearing on the Final Reports and Accounts as supplemented of Paul E. Darrow and Objections thereto and, 907 in addition, the copy of said Transcript forming a part of said stipulation dated June 30, 1949 may also be omitted from the Printed Transcript of Record on the Appeals herein.

7. Omit the Order entered July 1, 1949 by Judge Walter J. LaBuy in regard to the stipulation dated June 30, 1949 in regard to the Transcript of said Adjourned Hearing before Special Master Archie H. Cohen, which stipulation of June 30, 1949 is described in paragraph 6 of this stipulation. It is further stipulated that said Order is one of the two entries referred to in the certificate of the District

Court Clerk as appearing in the Record of Proceedings before Judge Walter J. LaBuy on July 1, 1949.

Dated this 15th day of August, 1949.

Irving Herriott
Urban A. Lavery
Attorneys for Paul E. Darrow,
Appellant and Cross-Appellee

Jacob Courshon
Attorney for John W. Guild,
Successor Trustee under Indenture of Mortgage, Appellee and Cross-Appellant

Thomas B. Hart
J. Kirk Windle
John I. Mayer
Attorneys for Securities and Exchange Commission, Appellee

C. W. Mulfinger
J. Edgar Kelly
Attorney for Stacy C. Mosser,
Successor Trustee, Appellee

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed transcript of record, filed November 18, 1949, in:

In the Matter of Federal Facilities Realty Trust, a Common Law Trust, and National Realty Trust, a Common Law Trust,

Debtors.

Paul E. Darrow, Former Trustee,

Appellant,

No. 9935

vs.

Stacy C. Mosser, Successor Trustee, *et al.*,

Appellees.

John W. Guild, Successor Trustee, etc.,

Appellant,

No. 9936

vs.

Paul E. Darrow, Former Trustee, *et al.*,

Appellees,

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 8th day of November, A. D. 1950.

(Seal)

Kenneth J. Carrick,
*Clerk of the United States Court of
Appeals for the Seventh Circuit.*

At a regular term of the United States Court of Appeals for the Seventh Circuit, held in the City of Chicago and begun on the fifth day of October, in the year of our Lord one thousand, nine hundred and forty-eight, and of our Independence the one hundred seventy-third.

In the Matter of Federal Facilities
Realty Trust, a Common Law
Trust, and National Realty Trust,
a Common Law Trust,

Debtors.

Paul E. Darrow, Former Trustee,
Appellant,

9935

vs.

Stacy C. Mosser, Successor
Trustee, *et al.,*

Appellees.

Appeal from the
United States Dis-
trict Court for the
Northern District
of Illinois, Eastern
Division.

And afterward, to-wit, on the seventeenth day of April, 1950, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

Monday, April 17, 1950.

Before:

Hon. Otto Kerner, Circuit Judge.

Hon. F. Ryan Duffy, Circuit Judge.

Hon. Philip J. Finnegan, Circuit Judge.

In the Matter of Federal Facilities
Realty Trust, and National
Realty Trust,
Debtors.

Paul E. Darrow, Former Trustee,
Appellant,

9935

vs.

Stacy C. Mosser, Successor
Trustee, *et al.*,

Appellees.

John W. Guild, Successor Trustee,
etc.,

Appellant,

9936

vs.

Paul E. Darrow, Former Trustee,
et al.,

Appellees.

Appeals from the
United States Dis-
trict Court for the
Northern District
of Illinois, Eastern
Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Irving Herriott and Mr. Urban A. Lavery, counsel for appellant and cross-appellee Paul E. Darrow, Former Trustee, and by Mr. C. W. Mulfinger, counsel for appellees Stacy C. Mosser, Successor Trustee, *et al.*, and by Mr. John I. Mayer, counsel for appellee The Securities and Exchange Commission, and by Mr. Jacob B. Courshon, counsel for appellee and cross-appellant John W. Guild, and the Court takes this matter under advisement.

And afterwards, to-wit, on the fourteenth day of August, 1950, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

October Term, 1949, April Session, 1950.

In the Matter of Federal Facilities
Realty Trust, a Common Law
Trust, and National Realty Trust,
a Common Law Trust,

Debtors.

Paul E. Darrow, Former Trustee,
Appellant,

9935

vs.

Stacy C. Mosser, Successor
Trustee, et al.,

Appellees.

John W. Guild, Successor Trustee,
etc.,

Appellant,

9936

vs.

Paul E. Darrow, Former Trustee,
et al.,

Appellees.

Appeals from the
United States Dis-
trict Court for the
Northern District
of Illinois, Eastern
Division.

August 14, 1950.

Before KERNER, DUFFY and FINNEGAN, Circuit Judges.

FINNEGAN, Circuit Judge. Two appeals in separate re-organization proceedings under Section 77B of the Bankruptcy Act are involved in case 9935. They were ordered consolidated by the District Court. The first appeal is

by Paul E. Darrow, former trustee of the Federal Facilities Realty Trust, a common law trust. The second is by the same Paul E. Darrow, former trustee of the National Realty Trust, also a common law trust. In these appeals Darrow seeks to reverse an order of the District Court, entered on April 12, 1949, which surcharged him as former trustee with the sum of \$43,447.46, and also to reverse all parts of such order which find that he was guilty of wrong doing or negligence as trustee in said proceedings.

Case 9936 is a cross appeal by John W. Guild, successor trustee under a trust indenture of mortgage issued by Federal Facilities Realty Trust on October 1, 1929. The cross appeal seeks to have this court declare a resulting trust in certain securities and assets of both Federal Facilities Realty Trust and of the National Realty Trust.

It appears from the record that on October 15, 1943, Paul E. Darrow, as former trustee of the Federal Facilities Realty Trust, filed his final report and account, and that thereafter and on February 11, 1944, he filed, pursuant to the order of the District Court, detailed schedules supplementing his final report and account. It likewise appears that on October 15th, 1943, said Paul E. Darrow, as former trustee of the National Realty Trust, filed his final report and account, and on April 21, 1944 again pursuant to an order of the District Court, filed detailed schedules supplementing such final report and account.

On May 15th, 1944, the Securities and Exchange Commission filed objections to each of said final reports and accounts as supplemented. Objections were also filed by Stacy C. Mosser, as successor trustee in both reorganization proceedings. In the Federal Facilities Realty Trust proceedings, objections were also filed by John W. Guild, successor trustee, under a mortgage indenture of said Federal Facilities Realty Trust, dated October 1, 1929.

The various objectors to the trustee's reports and accounts of October 15, 1943, claim among other things, that discrepancies existed in his accounts; that there was a failure to show correct accrued interest and earnings on holdings of certain subsidiaries; that loans of trust funds were made and not accounted for; that items in operating expense were not properly explained; that profits made in trading with Jacob Kulp and Myrtle Johnson in bonds of subsidiaries were not stated; that the trustee failed to explain his actions in failing to prosecute certain causes of action; that the trustee's requested compensation should

not be allowed; that he failed to state profits he made in connection with the purchase, through one Goldman, of certain securities; that there was a failure to disclose commissions or discounts paid to the trustee on account of certain insurance purchases; and that there was failure to disclose fully business transactions and profits made with Colonial Securities Company.

The District Court referred the accounts and reports, together with the objections thereto, to a Special Master, directing him to conduct full and complete hearings and to report to the court his findings of fact and his conclusions of law thereon.

The hearings began on October 25, 1944 and concluded on May 28, 1947. More than 2500 pages of testimony were taken. Counsel for the various parties conducted extended examination upon all matters contained in the reports and accounts of Darrow, as former trustee, and filed written briefs with the Special Master.

On April 29, 1948, the report of the Special Master was filed.

It is pertinent to note here that Darrow's special report in Federal Facilities Realty Trust covers his entire trusteeship from April 25, 1935 to August 13, 1943. In the National Realty Trust proceedings Darrow filed a report on November 30, 1940 which was approved on January 31, 1941. In this proceeding therefore the report and account here involved covered the period from December 1, 1940 to August 13, 1943. The finding of the Master was:

"During the eight and one-third years of Darrow's trusteeship he filed no reports of his administration of Federal and only one of his administration of National."

On April 12, 1949, the trial court overruled Darrow's objections to the report of the Special Master, and surcharged him as former trustee with the sum of \$43,447.46 because of profits made by two of his employees in dealing in underlying securities, consisting of bonds of subsidiaries of the Debtor Trusts.

The order of April 12, 1949 further provides:

"The determination of the ownership of certain securities described (in the Master's report) as 'securities in Lot 2'; whether or not Paul E. Darrow should be further surcharged for profits made in dealing in the securities involved in *Seligman v. Kulp*;

whether or not Paul E. Darrow should be surcharged for conduct in connection with the purchase of certain assets of Kulp & Company by his employee, Mrytle Johnson; and whether or not Paul E. Darrow should be paid additional compensation requested in his final reports and account will undoubtedly throw further light on the question whether Paul E. Darrow should be allowed the requested compensation, and therefore the foregoing matters are referred to a Special Master, in accordance with the general order of reference entered herein June 10, 1948."

Said order of April 12, 1949, also reserves the right to make further orders.

There is little, if any, controversy as to the facts pertinent to the problems presented in these appeals.

For many years prior to 1929, one Jacob Kulp had been engaged in constructing buildings in various localities throughout the country. He had erected twenty-seven such buildings, the majority of which had been leased to the Government of the United States for post office purposes. He had caused corporations to be organized to take title to all these properties save one, which was later incorporated. Individually and through a corporation, Kulp and Company, which he appears to have controlled, he had marketed securities of these various corporations and also those of the one unincorporated property. From the beginning Mrytle Johnson was associated with Mr. Kulp in these activities.

In 1929 and 1930 Jacob Kulp and Miss Johnson caused two common law trusts, Federal Facilities Realty Trust and National Realty Trust to be created. Thereupon Kulp transferred to Federal all of the capital stock of fourteen of these building corporations, and to National he transferred the stock of twelve such building corporations together with the title to the one (then unincorporated) piece of property. These building corporations and the unincorporated piece of property had various outstanding bond issues. They and their securities are referred to throughout the record as "subsidiaries."

When the common law trusts were organized certificates of beneficial ownership were issued. Most of these went to Jacob Kulp in exchange for the stock of the building corporations and for title to the unincorporated property. Federal Facilities Realty Trust also issued bonds in the

principal amount of \$550,000, of which Kulp received \$300,000 in principal amount as additional consideration for the transfer of stock in the fourteen building corporations turned over to that trust.

The securities of the subsidiaries had been marketed by Jacob Kulp through Kulp and Company, as well as by other organizations dealing in such securities. Kulp and Company also managed the various subsidiaries, and their properties and also other property not involved in these proceedings.

In 1931, Kulp and Miss Johnson organized the Colonial Securities Company, which engaged in general securities business in Chicago, and dealt in the securities of the subsidiary corporations.

Some time before 1933, the Post Office Department of the United States changed its policy of renting post offices and inaugurated a policy of erecting its own buildings. This made it difficult, if not impossible, to refinance the subsidiaries of the Federal Facilities and National Trusts because it was found that the Post Office Department would not renew existing leases. An investigation was made by the Department of Justice of the Federal and National Common Law Trusts and their subsidiaries. As a result Kulp, in July 1933, transferred all of the Certificates of Beneficial Ownership of Federal and National, together with his Collateral Trust Bonds issued by Federal to a Trustee, George H. Andresen, under a trust agreement referred to in the record as the Andresen Trust. Thereafter Andresen through Federal and National took over the management of the twenty-seven subsidiaries and continued such management for nearly two years, or until the appointment of Darrow as trustee. During all of Andresen's administration of Federal and National Trusts and their subsidiaries, he employed Jacob Kulp and Miss Johnson on a part-time basis, with the agreement that they would be allowed to operate the business of their Colonial Securities Company.

The present proceedings were instituted on December 26, 1934, by petition under Section 77B of the Bankruptcy Act, filed in the District Court for the Northern District of Illinois, which on April 25, 1935, entered an order approving the petitions as properly filed under said section of the Bankruptcy Act.

Paul E. Darrow was appointed trustee of Federal Facilities on April 25, 1935, and on May 24, 1935, he was ap-

pointed trustee of National Realty. He continued to act as trustee in both estates until his resignation August 13, 1943.

The orders appointing Darrow provided that he be directed and authorized to operate, maintain, and continue the business of the debtors and to manage their property until the further order of the court; that he should have and exercise, consistently with the provisions of Section 77B, all the powers of the trustee appointed pursuant to said section, subject at all times to the control and order of the court, and to such limitations and conditions as the court might from time to time impose and prescribe; that he should have full power and authority to do all things necessary or convenient to operation of the business and maintenance and preservation of said estates; that he be vested with all the rights, powers, and authority of a trustee in bankruptcy and of a receiver in equity.

After the appointment and qualification of Darrow, the former trustee, George Andresen, recommended to him that he employ Jacob Kulp and Myrtle Johnson to assist him. It was pointed out that they were well qualified to assist because of their intimate knowledge of the workings of the trusts and their subsidiaries. However, Miss Johnson and Kulp made it clear that they would remain as part-time employees only on condition that they be allowed to continue to operate in the securities business through Colonial Securities Company. Darrow employed them on a part-time basis, and they continued to operate Colonial, in the same way that had been practiced during their employment by the Andresen trust.

As we have pointed out, the record herein is so voluminous that it would be impracticable to detail in full the conduct of those trusts by Darrow and his employees, Johnson and Kulp. Consequently, we will consider only those matters which have a direct bearing upon the question presented by these appeals.

First, we consider Darrow's dealings in the purchase of securities.

It was Darrow's policy, as trustee, to acquire by purchase outstanding defaulted bonds of the various subsidiaries. During the eight years of his trusteeship he persevered in that policy and bought from individual bondholders and from dealers in securities, including Colonial operated by Miss Johnson and Jacob Kulp, subsidiary bonds of the total par value of \$2,414,600. Due in large

part to these purchases, the obligation of the subsidiaries (which were principally outstanding bonds) were reduced, during his eight years of trusteeship, from \$7,611,700 par value to \$5,197,100 par value.

These securities were purchased by Darrow partly for the debtor trusts, but the far greater part were acquired for the subsidiaries. At the time of his resignation, he held as trustee for Federal and National \$437,800, in principal amount, of bonds which Darrow had acquired at a total cost of \$79,333.80. These bonds, on his resignation, had a market value of \$164,279, and in addition the debtor trusts, Federal and National had received on the bonds purchased for them the sum of \$45,907.15 in interest. Therefore, the appreciation in market value of the subsidiary bonds, plus the interest received thereon, establish as a benefit to the debtor trusts from the transactions in the bonds, which amounts approximately to the sum of \$130,700. The Special Master in his report gives a breakdown of these figures.

He finds that, in the instance of Federal Facilities Trust, the total cost of all its subsidiary securities purchased by Darrow, was \$31,864.55. Each of these bonds was bought by him at the prevailing market price. At the time of his resignation the bonds had a market price of more than \$38,000. The testimony was that at the time of hearing before the Special Master the market price of these securities was more than \$87,100. It is further reported that up to that time the debtor trust, Federal Facilities, had received \$24,494 in interest on these securities.

In the case of National Realty Trust, the total cost of subsidiary securities purchased by Darrow was \$47,469.25. Again each of these was purchased at the market price. At the date of Darrow's resignation these bonds had a market value of \$56,635, and the testimony was that the market value, at the time of the hearings before the Master, was \$77,179. It was further then reported that up to that time the debtor trust National had received \$21,412.81 in interest on these securities.

As a matter of fact, the Special Master reports:

"As of the date of Darrow's resignation there had been a loss on only one group of bonds purchased. The loss on certain Quincy Station Post Office Building Corporation Second Mortgage bonds (a subsidiary of Federal Facilities) amounted to \$200. Interest on these collected up to that time, however, amounted to

\$1,966.25. On September 25, 1946, Miss Johnson stated that the value of these bonds had risen substantially since Darrow's resignation."

It is pertinent to note here that at the time of the filing of Darrow's final reports, practically all of the subsidiary corporations had been re-organized.

During his administration Darrow had likewise acquired from the First National Bank of Chicago for the sum of \$12,000 Collateral Trust bonds issued by Federal Facilities, amounting in par value to \$84,000. If on reorganization these bonds are found to be worth par, and this expectation seems to be reasonable, there would be a substantial benefit to the Federal Facilities estate. In the meantime, of course, that debtor trust is relieved from the payment of interest on these bonds.

The Special Master found in his report:

"There is not a scintilla of evidence to prove that Mr. Darrow profited in any sum whatsoever through his trading in securities of the trusts and the subsidiaries, but it is clear that Mr. Darrow failed to exercise due care and prudence in the administration of the trust estates."

II. Now we proceed to an examination of the so-called Seligman transaction.

Prior to the appointment of Darrow as trustee, suit had been instituted in the Superior Court of Cook County, Illinois, by one Seligman against Jacob Kulp. The suit sought the appointment of a receiver to take possession of certain securities which Kulp had turned over to the trustee in the Andresen trust.

A receiver was appointed and there were turned over to him 62,358 units of beneficial ownership in Federal Facilities and 10,761.6 units of beneficial ownership in National, together with Collateral Trust Bonds of Federal in the principal sum of \$286,100. There were also delivered to the State Court Receiver \$199,000 in par value of bonds of subsidiaries of Federal and National.

On May 6, 1938, these securities were sold at public sales by order of the Superior Court of Cook County, Illinois. The Special Master reports:

"That long before the sale was decreed he (Darrow) evidently felt that the purchase of those securities by him would be beneficial to the trusts, and instructed his attorney to seek permission of the Court (the

United States District Court) to bid for the securities. Such permission was denied him for reasons which were never brought out in the testimony."

The securities to be offered for sale under the State Court's decree were divided into two lots, known as Lot 1 and Lot 2. Lot 1 embraced the bonds of the subsidiaries and Lot 2 the units of beneficial ownership in the debtor trusts, and the Collateral Trust bonds of Federal Facilities.

Prior to the sales, Miss Johnson and Kulp, acting through Colonial, determined to make a bid for these securities up to \$25,000. They arranged for loans to carry out their intention. They procured a lawyer, Goodman, since deceased, who was attorney for the petitioning creditors herein, to act on their behalf in effecting the purchase. Their bid was successful and they purchased the securities involved for a total cost, including commissions, of \$24,203.55.

On about May 16, 1938, Darrow agreed to purchase some of the subsidiary bonds in Lot 1 for \$12,447.55. He issued checks of the subsidiary corporations involved for that amount on May 18, 1938. The sale under decree had been reported and confirmed but payment had not been made at the time of this purchase by Darrow.

On May 19, 1948, payment was made and the securities delivered. It is undisputed that the checks issued by Darrow to Colonial were used in making the payment due under the bid. The prices paid by Darrow for these securities were substantially the market price at that time,— "the prices at which the securities were selling or that we had paid for the securities."

The record shows that at the time of the hearings before the Master these securities had a market value of \$31,195.

Securities in Lot 1 of the par value of \$10,000 were given to the persons who had loaned or agreed to loan Miss Johnson the funds necessary to effectuate the purchase—a gentleman named Levy and another named Peterson who is related to Miss Johnson. The balance of the subsidiary securities were sold to the general public for \$19,457.50.

The securities in Lot 2 were not disposed of, they were at the time of the hearing before the Master, and still are under the control of the District Court. There is no testimony as to their value. These are among the securities involved in the cross appeal.

The Special Master surcharged Darrow for alleged profits of his employees in the Seligman transaction with the sum of \$10,701.50, and recommended that a further surcharge should be made in the future if any profits are realized from the sale of Securities in Seligman Lot 2.

III. The items of surcharges recommended by the Special Master and confirmed by the District Court, are shown in the following table:

A

Sales by Employees Direct to Darrow	
Profits on sales for account of Federal	\$ 4,051.60
Profits on sales for account of National	4,572.50
Total profits on these sales to Darrow.....	\$ 8,624.10

B

Sales by Employees to General Public	
Profits on sales of Federal securities to general public.....	\$10,044.36
Profits on sales of National securities to general public.....	14,077.50
Total profits on sales to public.....	24,121.86

C

Surcharges against Darrow for alleged profits to employees in Seligman transaction.....	\$10,701.50
Grand total surcharges against Darrow.....	\$43,447.46

The Darrow appeals present the question as to whether or not the surcharges were properly imposed against him under the facts and circumstances disclosed in this record.

In Remington on Bankruptcy, Section 2965, it is said:

"The Receiver is bound to exercise due diligence in the selection of employees and in informing himself as to whether the business is being conducted at a profit or a loss.

"A receiver will not be surcharged * * * where he has exercised due diligence in the selection of a book-keeper and superintendent even though in fact those

In his work on Trusts, Scott Reporter on that subject for the American Law Institute says, in volume 2 on page 1190,

"Sec. 225—A Trustee who employs an agent in the administration . . . is not liable to the beneficiaries for losses resulting from the improper conduct of the agent unless the Trustee himself is guilty of a breach of trust."

"Accordingly if in the administration of the trust the Trustee properly employs an agent who negligently loses trust property entrusted to him or misappropriates such property or otherwise causes a loss to the trust estate the Trustee is not liable to the beneficiaries for the loss."

Perry on Trusts, says in volume 3 on page 683 (7th edition):

"Sec. 409 . . . A Trustee who has used reasonable care in the selection of his agents for the performance of ministerial duties and who has been reasonably prudent in his supervision of the acts of the agents is not required to make good to the trust estate a loss or damage caused by the negligence or dishonesty of the agent, provided the duties delegated were such as the Trustee could properly delegate. The standard of reasonable conduct in such cases is the care which an ordinarily prudent man would exercise in the management of his own property."

In the case at bar, the Special Master whose findings and conclusions are concurred in by the District Court has reported that in view of the information available to Darrow at the time he hired Johnson and Kulp, it cannot be said that he was derelict in this respect. If after such employment Darrow was obliged to exercise "the care of an ordinarily prudent man in the management of his own property," it is difficult to see why he should be surcharged under the facts disclosed in this case. His supervision of the trust estate would disclose that the debtor trusts were being largely benefited by the fact that he was enabled to purchase from such part time employees at market prices, the securities of their subsidiaries.

Again, the finding of the Special Master must be borne in mind.

"There is no evidence that Darrow participated in any explicit scheme or plan to defraud the trusts.
•••••"

In the brief filed on behalf of Darrow, it is claimed that the appellees did not in the court below, and could not in this court, present a single bankruptcy case which sustains the theory of the trial court in assessing the surcharges against him. Appellant, on the other hand, cited and discussed a number of such cases, going as far back as an English bankruptcy case in 1794, *Ex parte Belchier* (1 Amb. 218; 27 Eng. Reprint 144).

In that case there was a question of the liability of an assignee in bankruptcy who had employed a broker to sell certain tobacco belonging to the estate. The broker sold the property, and received the money therefor, but failed to turn it over to the assignee. Later the broker died insolvent. The trial court held the assignee liable. Lord Hardwick, then Lord^d Chancellor of England, reversed the holding and said:

"If an assignee is liable in this case no man in his senses would act as assignee under the Commissioners in Bankruptcy. This court has laid down a rule with regard to the transaction of assignees and more so of trustees so as not to strike terror into mankind acting for the benefit of others and not for their own."

The case was followed in *Speight v. Gaunt* (1883), 22 Ch. 727, which also reversed an order of the trial court surcharging a trustee. In the *Gaunt* case a testamentary trustee had available for investment a large sum of money. The testator in his lifetime had done business with a certain firm of stock brokers. The trustee knew of this and consulted the same firm in and about the trust business. One of the partners in the brokerage firm duped the trustee and got physical control of the estate's funds without investing any of it. He later absconded so that the entire sum was lost. The Chancery Court reversed the trial court, and the order was sustained by the House of Lords. The Lord Chancellor said:

"In the early case of *ex parte Belchier* (1 Amb. 218) before Lord Hardwick, it was determined that * * * when according to the usual and regular course of business, * * * and without any misconduct or default on the part of the Trustee, a loss takes place, through any fraud or neglect of the agents employed, the Trustees are not liable to make good such loss. That authority has ever since been followed."

Coming to cases in our own country, appellant cites *Evans v. Williams*, 276 Fed. 650. In that case the Hitt Lumber & Box Company was the bankrupt and creditors insisted that Evans, the Trustee, should be subjected to a surcharge by the court 'for losses incurred in the operation of the business.' The matter was referred by the court to a Referee, who held a hearing, as a result of which he recommended a surcharge against Evans for the sum of \$11,759.51 * * *. The District Court confirmed the surcharge against Evans, who thereupon appealed. The Court of Appeals reversed the surcharge against the Trustee and announced the law as set forth below. The Appeals Court said on page 657:

"The receiver could not, and of course was not expected to, manage a business of this magnitude without expert assistants. He did employ a competent and experienced man as general manager and another competent and experienced man as book-keeper. Had he failed to do this, he would have been guilty of gross negligence. While it is suggested that these men purposely falsified the accounts and delivered to him false inventories, nevertheless it is not contended that the receiver had any reason to believe that these inventories and accounts were not correct, * * *."

"Taking these facts into consideration * * *, this court has reached the conclusion that his failure (to discover the falsity of the employee's report) was not such negligence on his part as would entitle the creditors to recover from him personally the losses sustained * * *. Therefore the judgment of the District Court is reversed."

In the *Marcus* case, 2 Fed. Sup. 524, a Bankruptcy Receiver appointed by the Federal Court was operating a chain of grocery stores in the City of Pittsburgh. In that case, the business side of the Bankruptcy Proceedings was complicated. Accordingly, the Receiver, without any specific court authority whatever, proceeded to retain and employ as part time employees two of the *Marcus* brothers themselves, the individuals for whose questionable dealings the stores had been brought to bankruptcy. During the period that the Receiver employed the two *Marcus* brothers, they had secretly stolen \$31,000 worth of merchandise from the various store buildings, and had

also stolen \$53,000 in cash while helping to operate the business. On that set of facts the Referee in Bankruptcy had surcharged the Receiver for both of those items a total of \$84,000.

Judge Schoonmaker reversed the decision of the Referee and held that the Receiver should not be surcharged in any respect whatever. In so doing the Court announced the doctrine that there must be some "personal fault" on the part of a Trustee in such a situation to render him liable to be surcharged for the wrongdoing of his employees. In so holding Judge Schoonmaker said:

"We take it to be elementary law that a Receiver will not be personally liable for losses sustained in the administration of an estate where he exercises good faith and ordinary care and prudence; nor will he be held for losses resulting by reason of the negligence of his employees without personal fault on his part in matters necessarily or properly committed to them in the management of the trust property.

"The Pennsylvania Courts I believe lay down the correct rule, i. e. that a receiver is liable to surcharge only when guilty of fraud or supine negligence equivalent to fraud."

Judge Schoonmaker's language about "personal fault" and "supine negligence" comes directly from the opinion of the Supreme Court of the United States in the early case of *Taylor v. Benham*, 5 How. 233, 12 L. Ed. 130.

The *Marcus* case was affirmed 67 F. 2d 1008, and the Supreme Court denied *certiorari* in 291 U. S. 679.

In *re Portex Oil Co.*, 43 Fed. Sup. 859, and in *re Berger Kosher Sausage Co.*, 129 F. 2d 62, decided by this court, are likewise cited on behalf of Darrow as appellant.

In the *Berger Sausage Company* case, a bankruptcy proceeding in the District Court of Illinois, the Empire Packing Company, a creditor, had filed objections to the Trustee's account, asking that the Trustee be surcharged for two items: First, for losses incurred in the operation of the sausage business by the Trustee; and second, because the Trustee had allowed one of his employees to conduct a side-line business at the same time he was acting for the Trustee, at a substantial "profit" to himself. In the *Sausage Company* case the court directed the Referee in Bankruptcy to make an investigation of the facts and report back, which the Referee did, finally concluding that there should be no surcharge against the Trustee.

It appeared that "very large losses" had been incurred by the Trustee in the operation of the business after his appointment as Trustee; "that the Trustee's methods of bookkeeping were not of the best"; that the employee "had no previous experience in such business"; that the employee "during his employment" had engaged in a side-line business and had "opened up a retail outlet with money borrowed" from the Trustee himself; and finally, that "after the sale of the bankrupt estate, the employee and two principal stockholders of the bankrupt concern, went into the sausage business with money largely borrowed from the Trustee, without security."

Certainly if Darrow's employees conducted themselves in such fashion as to justify the Court surcharging Darrow for the "profits" which they made in their part time business, then such a surcharge should have been made in the *Sausage Company* case. However, the Referee held that "the evidence was insufficient to surcharge the Trustee for any wrongdoing while acting as Trustee in Bankruptcy." The District Court (Judge Woodward) confirmed the Referee's Report, whereupon the Objecting Creditors appealed to this Court, where the judgment of the District Court was affirmed. The opinion of this Court is of such significance that we quote the following passage from it:

"The general rule is that receivers are not chargeable with losses resulting from their operation of the business, although it is their duty to exercise diligence in selecting competent employees and informing themselves as to the profits and losses from such operation. See *Remington on Bankruptcy*, 4th Ed., Secs. 446, 2662 and 2965. The degree of diligence exercised, we think, is a matter for the bankruptcy court to determine." (from the facts of each case.)

The appellees have not met the challenge of the appellants. The brief filed on behalf of the Securities and Exchange Commission cites no case which supports, or even tends to support, the surcharges made against Darrow in the case at bar. They quote at length only a single case, *American United Mutual Life Ins. Co. v. City of Avon Park*, 311 U. S. 138-146. In that case a Florida city was seeking a composition of its debts under the Bankruptcy Act. In the language quoted therefrom, the Supreme Court was criticizing the "fiscal agent" of the city who

had solicited claims against the city from the public and had purchased them at a discount for its own private benefit. The situation is in no way comparable to the case at bar.

The brief filed on behalf of the successor trustee, Mosser, likewise fails to cite a single relevant case. The first point urged in that brief is that a trustee may not deal with his trust in such a way as to make a personal profit for himself, and that consequently he should be surcharged for allowing his agents and employees to make profits which he could not himself make in equity. No authority is cited to sustain the last clause of the statement.

In the Mosser brief *Macgruder v. Drury*, 235 U. S. 106, is discussed. In that case a testamentary trustee had purchased for his trust estate some real estate securities. The securities were bought through a brokerage firm of which the trustee himself was a member, and this firm had received profits by way of commissions for the purchases. Clearly the trustee was responsible to the estate for the profits so made—and the Court so held.

The brief filed on behalf of the Indenture Trustee Guild merely adopts the arguments and citations of the other appellees on this phase of the case.

We are convinced that the District Court was in error in surcharging Darrow with the items enumerated, under the facts and circumstances shown in the record. That portion of the order making the surcharge is reversed.

We cannot, however, agree with appellant's contention that Darrow was guilty of no negligence as trustee; we agree with the District Court that Darrow's failure to file reports showed a woeful neglect of duty.

The theory of the cross appeal is that part of the securities purchased by Miss Johnson in the *Seligman* case, referred to as Lot 2, should be impressed with a resulting trust in favor of the successor trustee of the debtor trusts. A similar contention is made with reference to certain accounts receivable which were acquired by Miss Johnson in a sale conducted by the Trustee in Bankruptcy of Jacob Kulp & Company. These matters are being urged only by the Indenture Trustee, under a deed of trust by Federal Facilities. Neither the Securities and Exchange Commission, nor Stacy C. Mosser, successor-trustee of the debtor trusts, join in the contentions or arguments presented in support thereof. The principal argument adduced on behalf of the cross-appeal is that Darrow as trustee ad-

vanced the money used to make the purchases at these judicial sales. The evidence is that other persons, Levy and Peterson agreed to loan, and actually did loan Miss Johnson, certain sums to be used in making such purchases. Both these contributors, as well as Miss Johnson, would be indispensable parties to a bill to declare a resulting trust. They are not parties to nor represented in the proceeding now before the court. This is merely a hearing on the final accounts and reports of Darrow as trustee for the debtor trusts.

Moreover, the District Court in its order of April 12, 1949, reserved for future decision "the determination of the ownership of certain securities as securities in Lot 2," as well as "whether or not Darrow should be surcharged for conduct in connection with the purchase of certain assets of Kulp & Company by his employee, Miss Johnson." These matters (with others) were referred to a special master, and the court reserved the right to make further orders in connection therewith.

In addition we are given to understand, by a motion asking leave to present oral argument herein, that these very matters are now being heard and litigated under the orders of the trial court. Consequently, on this record in appeal 9936 we are not now passing upon the question of a resulting trust, nor any of the other questions that are covered in Judge Campbell's order with reference to the Seligman transaction, nor other matters reserved by the District Court for further consideration.

The order of the District Court of April 12, 1949, so far as it surcharges Darrow with the items detailed is reversed; in all other respects said order is affirmed.

None of the parties shall recover costs on these appeals.

And on the same day, to-wit, on the fourteenth day of August, 1950, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

Monday, August 14, 1950.

Before:

**Hon. Otto Kerner, Circuit Judge.
Hon. F. Ryan Duffy, Circuit Judge.
Hon. Philip J. Finnegan, Circuit Judge.**

**In the Matter of Federal Facilities
Realty Trust, a Common Law
Trust, and National Realty Trust,
a Common Law Trust,**

Debtors.

**Paul E. Darrow, Former Trustee,
Appellant,**

9935

**vs.
Stacy C. Mosser, Successor
Trustee, of al,**

Appellee.

**Appeal from the
United States Dis-
trict Court for the
Northern District
of Illinois, Eastern
Division.**

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the order of the said District Court of April 12, 1949, in this cause appealed from be, and the same is hereby, Reversed so far as it surcharges Paul E. Darrow with the items detailed, and in all other respects the said order is Affirmed.

It is further ordered by this Court that none of the parties shall recover costs on this appeal.

And afterwards, to-wit, on the twenty-fifth day of August, 1950, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

August 25, 1950.

Before:

Hon. Otto Kerner, Circuit Judge.

In the Matter of Federal Facilities
Realty Trust and National Realty
Trust,

Debtors.

Paul E. Darrow, Former Trustee,
Appellant,

9935

vs.

Stacy C. Mosser, Successor
Trustee, et al.,

Appellees.

John W. Guild, Successor
Trustee, Etc.,

Appellant,

9936

vs.

Paul E. Darrow, Former Trustee,
et al.,

Appellees.

Appeals from the
United States Dis-
trict Court for the
Northern District
of Illinois, Eastern
Division.

Pursuant to stipulation of counsel, it is ordered that the time within which the Appellees may file their petition or petitions for rehearing in the above entitled matters be, and the same is hereby, extended to and including September 11, 1950.

And afterwards, to-wit, on the eleventh day of September, 1950, there was filed in the office of the Clerk of this Court a petition for rehearing, which said petition for rehearing is in the words and figures following, to-wit:

In the
United States Court of Appeals
For the Seventh Circuit

No. 9935

In the Matter of Federal Facilities Realty
Trust, a Common Law Trust, and Na-
tional Realty Trust, a Common Law
Trust,

Debtors.

PAUL E. DARROW, Former Trustee,
Appellant,

vs.

STACY C. MOSSER, Successor Trustee,
et al.,
Petitioners-Appellees.

PETITION FOR REHEARING.

ROGER S. FOSTER,
General Counsel,
425 Second Street, N. W.,
Washington 25, D. C.,

THOMAS B. HART,
Regional Administrator,
105 W. Adams Street,
Chicago 3, Illinois,
Attorneys for Securities and
Exchange Commission, Ap-
pellee.

U. S. C. A.-7
FILED

SEP 11 1950

KENNETH J. CARRICK
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Successor Trustee, Appellee.

JACOB B. COURSHON,
DAVID J. RATNER,
Attorneys for John W. Guild,
Successor Trustee under In-
denture of Mortgage, Appellee.

In the
United States Court of Appeals
For the Seventh Circuit

No. 9935

**In the Matter of Federal Facilities Realty
 Trust, a Common Law Trust, and Na-
 tional Realty Trust, a Common Law
 Trust,**

Debtors.

PAUL E. DARROW, Former Trustee,
Appellant,

vs.

STACY C. MOSSEB, Successor Trustee,
et al.,
Petitioners-Appellees.

PETITION FOR REHEARING.

*To the Honorable Judges of the United States Court of
 Appeals for the Seventh Circuit:*

Comes now Stacy C. Mosser, successor trustee of Federal Facilities Realty Trust and of National Realty Trust, the Securities and Exchange Commission, and John W. Guild, as successor trustee under an indenture of trust securing the outstanding bonds of Federal Facilities Realty Trust, dated October 1, 1929, appellees in this proceeding, and file this petition for rehearing of consolidated appeals bearing Number 9935, in which judgment was rendered by this Court reversing the judgment of the United States

District Court for the Northern District of Illinois, Eastern Division, the said judgment of this Court having been rendered on the 14th of August, 1950; and for grounds thereof respectfully represent that the Court's opinion rendered August 14, 1950, indicates that certain material matters of fact and law were overlooked.

At page 4 of the opinion, the Court states: "There is little, if any, controversy as to the facts pertinent to the problems presented in these appeals." Appellees agree that there is no material dispute as to what the basic facts are, i. e., that Kulp and Johnson, while employed by the trustee, made large profits trading in securities relating to the trusts, including substantial sums made in direct sales to the trusts. We believe, however, that the Court failed to appreciate the confidential nature of the employment of Kulp and Johnson and its relation to the trading from which they profited. This is indicated by the Court's references to the "part time" basis of their employment (Opinion p. 6), and to the "market prices" at which the securities were sold to the estate (pp. 7, 11). ^

During Darrow's trusteeship, Miss Johnson had complete supervision over the office, handled inquiries and complaints, advised Darrow on all phases of management, assisted in the reorganization of the subsidiaries, and had available to her complete data concerning the trusts and the subsidiaries (R. 152, 108, 188, 190, 206, 209-10). She was the best informed person in the organization and enjoyed an effective acquaintanceship with a large percentage of the bondholders (R. 153, 200, 206-7, 281-2, 295, 338). She

enjoyed Darrow's complete confidence, and it is clear from the record that he depended to a large extent upon her ability and judgment, even with respect to determinations which would affect the prices at which bonds would be purchased for the trusts (R. 152, 200, 211, 217-18). Kulp managed the physical properties for Darrow and enjoyed his complete confidence. He also had access to all records and information in the office (R. 182, 199-200, 217-18). These facts created an intense fiduciary relationship requiring fidelity of the highest order.

As this Court found (Opinion p. 6), it was Darrow's policy as trustee to acquire by purchase outstanding bonds of the various subsidiaries. Although the Court stated that these bonds were purchased at the market, there is no evidence in the record that there was any established market price for the securities involved other than Miss Johnson's own references to the market price. The only substantial market place for these securities appears to have been the trustee's office, in which Kulp and Johnson worked, and the only "market" prices for these securities, apart from the trust, were those prices which Kulp and Johnson set. The Special Master found (R. 514):

"Thus, when bondholders came into the office desiring to sell bonds Miss Johnson knew what price Darrow was paying (Tr. 721) and purchased at a price below that figure (Tr. 722, 1866). She told the security holders that they were getting the 'market price' for their bonds (Tr. 1863) and purchased on her own behalf or on behalf of Colonial. The bonds so purchased were subsequently resold to Darrow (Tr. 1864). In

almost every case Miss Johnson or Colonial made a profit (SEC Exs. 5 and 6). Occasionally Colonial sold bonds at cost or less (Tr. 1646), but Miss Johnson testified that she, personally, always sold at a profit (Tr. 1818, 1819).''

Upon the basis of these facts, the Special Master and the Court below found that Kulp and Johnson, *while serving in a confidential and fiduciary capacity*, had realized profits in the aggregate amount of \$43,447.46 from trading in securities of the debtors.

On page 6 of the Opinion, this Court found that Johnson and Kulp were well qualified to assist Darrow because of their intimate knowledge of the trusts and their subsidiaries. It was this very fact which of itself made them fiduciaries. This Court, however, gave no weight to this finding and ignored the conclusion of the Special Master and the District Court that Kulp and Johnson were fiduciaries and, as such, were forbidden from dealing in the securities of the debtors. We respectfully submit that the finding of the Special Master, affirmed by the District Court, as to their fiduciary relationship should not be overturned without finding it to be clearly erroneous.

It has been generally recognized by the courts that fiduciaries are required to observe the strictest standards of conduct in the handling of their duties and obligations. Under accepted equitable principles, a fiduciary is precluded from realizing a profit out of his trust position, *Magruder v. Drury*, 235 U. S. 106, 59 L. Ed. 151 (1914); *Jackson v.*

Smith, 254 U. S. 586, 65 L. Ed. 418 (1921).¹ It is no defense in an action involving profits by a fiduciary that the transactions were effected through the medium of a corporation, *In re Norcor Mfg. Co.*, 109 F. (2d) 407 (C. A. 7, 1940). Thus the profits obtained by Jacob Kulp and Myrtle Johnson, either directly or through their corporation, were inequifably procured and must be characterized as unlawful gains.

The Special Master and the Court below found that Kulp and Johnson had engaged in their trading activities with Darrow's knowledge and acquiescence. Had the trustee himself traded in the subject matter of his trust in violation of his fiduciary obligations, there can be no question that he would be liable to the trust for any profits which he made regardless of profit or loss to the trust. This Court appears to recognize, at page 17 of its opinion, the fact that fiduciaries are precluded from trafficking in the subject matter of their trust, but refuses to impose liability on the trustee for the known misconduct of the trustee's agents or employees. In this connection the following language contained in Scott's Law of Trusts, Volume II, Section 225.1, p. 1191-2, is significant:

"Where the Trustee is Himself at Fault"

The Trustee is liable for the acts of an agent employed by him in the administration of the trust if the trustee is himself guilty of a violation of a duty to the beneficiaries. *Thus where the agent does an act which*

1. Indeed, it has recently been held by a state court that any employee who acts for his own benefit upon confidential information derived from his employment is liable for the profits made therefrom, even though injury to the employer could not be shown. *Brophy v. Cities Service Co.*, 70 A. 2d 5 (Del. Ch., Dec. 1949).

if done by the trustee would constitute a breach of trust, the trustee is liable if he directed or permitted the doing of the act. He is liable if he improperly delegates to an agent the performance of acts which he was under a duty personally to perform. He is liable for the act of an agent employed by him in the administration of the trust, if he did not use reasonable care in the selection or retention of the agent. The trustee is liable for acts of the agent if the trustee has failed to exercise proper supervision over the conduct of the agent. He is liable if he unnecessarily entrusts money or securities of the trust or title deeds or other property to an agent, or permits the agent unnecessarily to retain the property, with the result that the agent misappropriates it. He is liable where the agent does an act which if done by the trustee would be in breach of trust, if the trustee approved or acquiesced in or concealed the act of the agent. The trustee is liable if the agent does an act which if done by the trustee would be in breach of trust, if he does not take proper steps to compel the agent to redress the wrong." (Emphasis supplied.)

The only effective way in which courts can assure the beneficiaries of trusts that their trustees will not knowingly permit improper acts to occur by agents or employees of trusts is to require the trustee to be held liable if he knowingly allows such acts to occur. There is no other effective sanction available to the court, and consequently it is imperative that trustee Darrow be surcharged for knowingly permitting his employees to engage in improper conduct in accordance with the order of the lower court.

In overturning the decision of the Court below, this Court cited *In re Breger Kosher Sausage Co.*, 129 F. (2d) 62 (C. A. 7, 1942). It is significant to note that the opinion in the *Breger* case quotes language from *U. S. v. Howard*, 96 F. (2d) 893, 896 (C. A. 7, 1938), a prior decision of this Court, to the effect that "trustees and *all other fiduciaries* are forbidden from dealing in their own behalf with respect to matters involved in the trust, and this prohibition operates irrespective of good faith, or bad faith, of such fiduciaries." (Emphasis supplied.) Although the trustee in the *Breger* case was absolved from liability, the case is clearly distinguishable for the Court ~~there~~ stated that the findings of the referee showed after painstaking inquiry no evidence to support the allegation of misconduct. In the instant case, both the Special Master and the bankruptcy court determined that the evidence fully supported the charges against Darrow and we submit that this Court should (as in the *Breger* case) follow the findings of the lower court which were also reached after long and painstaking inquiry.

It would appear that this Court's opinion is also bot-tomed upon the theory that since Darrow did not personally profit through his trading in the securities of the trusts and the subsidiaries, and since the trust estates did not suffer any loss and, in fact, profited through his various transactions in the securities of the debtors and the subsidiaries, Darrow could not be surcharged for profits made by his employees. It is true that there is no evidence that Darrow personally profited through his transactions

in the securities of the debtors and the subsidiaries. The fact that Darrow did not personally profit from the misdeeds of his trusted employees, however, should not be determinative. To so hold would in any case permit a trustee to stand by and knowingly permit its employees to trade in assets of its trust and defend itself by blandly stating that it received no benefit from the misdeeds of employees who were working for the benefit of their own bank accounts rather than for the interests of the trust. Since Darrow, with full knowledge of the facts, sanctioned the trading by his employees, he became liable for their misconduct and amenable to surcharge.

In the case of *Carson Pirie Scott & Co. v. Turner*, 61 F. (2d) 693 (C. A. 6, 1932), cited in the brief of the Securities and Exchange Commission at page 10, an auctioneer employed by a trustee in bankruptcy misappropriated considerable merchandise over a period of time. On the theory that the defalcations were made possible by the negligence of the trustee, the court directed that the compensation paid the auctioneer be disallowed in the trustee's account and surcharged the trustee with the value of the goods taken so far as ascertainable. The opinion states that the proper administration of the bankrupt's estate required that the trustee exercise reasonable diligence in the performance of his duties and that if he had done so, it was inconceivable that he would not learn of their misconduct. In the instant case, it is clear from the record and is admitted that Darrow knew of the breaches of duty of his employees, yet continuously permitted them to trade in

the securities of the debtor over an extended period. It is no valid defense that he received no share in the profits. In the case cited above, the trustee likewise received no benefit from the misdeeds of his employee, yet he was surcharged for failure to exercise reasonable diligence.

In *In re Curtis*, 76 F. (2d) 751 (C. A. 2, 1935), also cited in the brief of the Securities and Exchange Commission, an employee of a receiver in bankruptcy placed orders with a bank to sell more of a certain class of stock than the estate owned. The bank sold the stock and was thereafter forced to buy additional shares at a higher price in order to effect delivery, and charged the estate's account with the loss. The court surcharged the receiver, stating that although a trustee or receiver may employ assistants, he must use reasonable care to engage competent assistants. Any requirement short of this would put a premium upon inattention by a fiduciary to the duties of his trust and subject the estate for which he acts to hazards of the grossest sort.

We submit that the application of the principles of these two cases to the instant case renders unavoidable the surcharge of Darrow for his own misconduct in knowingly permitting the improper activities of his employees over a long period during the administration of this estate. The principle requiring reasonable care with respect to original employment applies with equal force to the continuation of such employment. In the *Curtis* case, the receiver's employee was incompetent. In the instant case

and in the *Carson Pirie Scott* case the employees were unfaithful to their trust duties as fiduciaries. A court sanctions neither the employment nor the retention of an improper employee, nor inattention by a trustee which would permit an employee to engage in improper acts as in the *Carson Pirie Scott* case, and authorizes a surcharge from the trustee who tolerates inability or misconduct on the part of his employees. In the instant case not only did improper acts occur, but the trustee knew of and acquiesced in these improper acts.

The cases cited in support of the Court's opinion in the instant case appear to be limited to the proposition that no liability attaches to a trustee for wrongful acts on the part of his employees where their misconduct has occurred without his fault or knowledge and through no lack of adequate supervision. These cases have no application to the present situation where the trustee countenanced the misconduct throughout the entire period of his administration and had full knowledge of the fact that his employees were realizing profits at the expense of the public security holders and the trust estates. We respectfully submit that the cases referred to in the Court's opinion should all be distinguished because in those cases no negligence or inattention on the part of the receiver or trustee was shown and no assistance was rendered to the unfaithful employees in their misconduct. Not one case cited in the opinion holds that a trustee or other fiduciary may be absolved from liability where, with full knowledge of the facts, he has permitted misconduct on the

part of his employees or agents. That is the precise issue in this case.

We again call the Court's attention to the facts which distinguish the following cases relied upon in the Court's opinion, from the present case.

In *Ex parte Belchier*, 1 Amb. 218; 27 Eng. Reprint 144, an assignee in bankruptcy employed a broker to sell tobacco belonging to the estate. The broker sold the property, received the money, and at the end of ten days died insolvent before he paid the money over to the estate. The court simply held that where usage dictated the employment of a broker and he was selected with care, no liability attached to the fiduciary for the broker's defalcation.

In *Speight v. Gaunt*, 22 Ch. 727, a trustee invested money with a firm of stock brokers. One of the members of the firm duped the trustee, got control of the funds, and absconded. This case exonerated the trustee because he "had not the least suspicion" of his agent's unfaithfulness.

In *Evans v. Williams*, 276 Fed. 650, the court refused to surcharge a trustee because his employees had purposely falsified accounts and inventories, which the trustee had no reason to believe were false.

Also, in the *Marcus* case, 2 F. Supp. 524, the employees of the receiver secretly stole \$31,000, and the receiver was not surcharged with the loss because there was no personal fault on the part of the receiver.

In none of the aforementioned cases was it demonstrated

that the trustee was guilty of supine negligence nor that he could have prevented the misconduct. In the instant case, the activities of Johnson and Kulp in trading in the securities of the debtors and their subsidiaries continued over a period of many years with the full knowledge and acquiescence on the part of Darrow. He was not misled or deceived, and through the exercise of reasonable diligence he could have terminated their activities. The appellant did not cite and is not able to cite any case which even remotely indicates that a trustee in the situation of trustee Darrow should be exempted from liability where the trustee knew of his employees' activities. Consequently, even if there is no case on all fours with the instant case, this Court should be governed by fundamental rules of law, which, we submit, are correctly set forth by Professor Scott as quoted on page 5 hereof.

The opinion of the Court stresses the fact that the activities of Darrow in the acquisition of the securities of Federal and National and their subsidiaries resulted in substantial benefits to the estates. We respectfully submit that this fact, if true, is not determinative of the issue here involved. The bulk of the securities purchased by the trustee and referred to by this court at pages 6 and 7 of its opinion were purchased through sinking funds of the subsidiaries pursuant to plan. No credit belongs to the trustee for merely doing that which was largely required to be done pursuant to express provisions of previous reorganization plans. Moreover, a trustee is appointed on the assumption that he possesses business ability and is

bound to exert his best efforts and employ all the skill at his command at all times for the benefit of the estate. The fact that the assets subsequently appreciated in value does not absolve the trustee from his fiduciary obligations. The fact that over a period of years a war has intervened, the general standard of living has gone up, real estate securities in general have risen in price and the dollar has been devalued, cannot properly be used as a protection to the trustee for the consequences of his willful acquiescence in transactions in the trust property by his employees who are obligated to work for that trust. The duties of a trustee toward his trust and the beneficiaries thereof cannot depend on fortuitous gambles on the manner in which subsequent circumstances would affect a transaction undertaken at an earlier time. The trustee's duties must be stringently enforced at all times without particular exception, *Meinhard v. Salmon*, 249 N. Y. 458 (1928). It follows, therefore, that such benefits, if any, to the estate as may be ascribed to Darrow or his employees do not equitably furnish a defense to his supine negligence in permitting the activities of Kulp and Johnson which resulted in profits to them. The opinion of the Court also overlooks the fact that Darrow countenanced the acquisition by Kulp and Johnson of the top trust securities through the sale in *Seligman v. Kulp* and that their attempt to acquire these securities may ultimately result in

overwhelming benefits to them rather than to the estate and the public security holders whom Darrow was duty bound to protect.

The Court in its opinion at page 11 implies that Darrow acted as an ordinarily prudent man in the management of his own property. As we have pointed out above a reorganization trustee, is not permitted to traffic in the assets of the trust for his own gain nor can his employees do so. Certainly a trustee is not exercising the care of an ordinarily prudent man in knowingly permitting his trusted employees to do that which both he and they are forbidden to do.

We respectfully submit that by reversing the order surcharging the trustee in this case, this Court has removed an effective sanction against the pernicious influence in bankruptcy reorganization proceedings of confidential employees interested primarily in profiting from the reorganization. Moreover, if permitted to stand, the decision might have a serious, widespread and deleterious effect upon the standard of ethics generally followed in the administration of trusts throughout the country for it affords an opportunity to trustees of all types individual or corporate, to permit their key employees to take advantage of their position, while the trustees, to whom the court should be permitted to look for ultimate responsibility, shoulder no blame and are absolved from all liability. We

therefore urge that a rehearing be granted and that the mandate of this Court be stayed pending disposition of this petition.

C. W. MULFINGER,

J. EDGAR KELLY,

*Attorneys for Stacy C. Mosser,
Successor Trustee, Appellee,*

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425 Second Street N. W.,

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105 W. Adams,

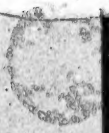
Chicago 3, Ill.,

*Attorneys for Securities and
Exchange Commission, Ap-
pellee,*

JACOB B. COURSHON,

DAVID J. RATNER,

*Attorneys for John W. Guild,
Successor Trustee under In-
denture of Mortgage, Appel-
lee.*



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And afterwards, to-wit, on the twentieth day of September, 1950, there was filed in the office of the Clerk of this Court an answer of Paul E. Darrow, Former Trustee, to the petition for rehearing which said answer is in the words and figures following, to-wit:

IN THE

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

No. 9935

In the Matter of **FEDERAL FACILITIES
REALTY TRUST, a Common Law Trust,
and NATIONAL REALTY TRUST, a
Common Law Trust,**

Debtors.

Appeal from the United
States District Court
for the Northern Dis-
trict of Illinois, Eastern
Division.

PAUL E. DARROW, Former Trustee,
Appellant,

vs.

**STACY C. MOSSER, Successor Trustee,
et al.,**

Appellees.

**ANSWER OF PAUL E. DARROW, FORMER TRUSTEE,
TO PETITION FOR REHEARING.**

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FILED

SEP 20 1950

KENNETH J. CARRICK
CLERK

**URBAN A. LAVERY,
IRVING HERRIOTT,**
Attorneys for Appellant, Darrow.

IN THE
United States Court of Appeals
 FOR THE SEVENTH CIRCUIT

No. 9935

In the Matter of **FEDERAL FACILITIES
 REALTY TRUST, a Common Law Trust,
 and NATIONAL REALTY TRUST, a
 Common Law Trust,**

Debtors.

**PAUL E. DARROW, Former Trustee,
 Appellant,**

vs.

**STACY C. MOSSER, Successor Trustee,
 et al.,**

Appellees.

Appeal from the United
 States District Court
 for the Northern Dis-
 trict of Illinois, Eastern
 Division.

**ANSWER OF PAUL E. DARROW, FORMER TRUSTEE,
 TO PETITION FOR REHEARING.**

*To the Honorable Judges of the United States Court of
 Appeals:*

Comes now Paul E. Darrow, Former Trustee of Federal
 Facilities Realty Trust and National Realty Trust, Appel-
 lant herein, and for Answer to the Petition for Rehearing
 heretofore filed herein, respectfully says:

Nothing New in Petition for Rehearing.

The first and obvious answer to the Petition for Rehearing filed herein is the fact that there is nothing new whatever in it. Everything contained in it is a re-hash of matters that were fully discussed in the Briefs filed in this Court and in the oral argument.

Another Effort to Make New Law.

It is entirely fair to say that the gist of the Petition for Rehearing constitutes merely another effort to do what the Appellees have tried to do throughout this case, before the Master, before the Trial Court, and in this Court: namely, to establish *new law*, with respect to the liability of a Trustee in Bankruptcy for surcharges, because of alleged derelictions of his employees.

As Appellant said in his Briefs before this Court, and as the Opinion of this Court points out, the Appellees totally failed to meet the challenge which Counsel for Appellant Darrow made to Appellees' Counsel, to produce a single authority to support that *new law* theory. In their Petition for Rehearing they have again failed to meet that challenge.

We propose now to discuss in summary fashion a few items in the Petition for Rehearing.

Darrow's Purchases Always at Market Price.

Up to this time, Appellees have never questioned the fact that Darrow never paid more than the going market price for the bonds which he purchased. The quotation found on Pages 3 and 4 of the Petition (which by innuendo suggests otherwise) is lifted from the context of the Master's Report; moreover that quotation does not truly represent the testimony on the point. The fact is that Darrow always paid the current market price for securities. We merely quote here two paragraphs from Darrow's own testimony (Tr. p. 210) which clearly proves that fact:

"I believe every time we communicated with bondholders we told them what we were paying for bonds or at what rate recent purchases had been made; except in one or two instances the sinking fund did not call for tenders. The general practice was for me to determine how much money could be used for that purpose. I established a price.

"If the bonds came too fast, we would lower the price. I have dealt in securities for more than forty years and think I am fairly competent to decide upon a reasonable price. *I had daily quotation sheets in which many of our issues were quoted and I knew the price of similar bonds.*" (Italics added.)

We further respectfully say that for the Appellees to raise this point for the first time in their Petition for Re-hearing is not in keeping with our understanding of the Practice governing such matters.

The Text Authorities and Cases Rehashed.

We have no intention of again discussing at length the authorities which were cited to the Court in Appellant's Briefs and in oral argument, most of which are found mentioned in the Court's Opinion. We will not again enter into that argument, notwithstanding the fact that in the Petition for Rehearing, Appellees have rehashed Authorities and Cases rather extensively. We feel, however, with respect to the quotation from Scott's Law of Trusts on Pages 5 and 6 of the Petition, that the following quotation from that Text writer found on Page 50 of our main Brief and set forth in the Court's Opinion is a more correct and pertinent quotation as far as the law in this case is concerned. This quotation is as follows:

"Sec. 225. LIABILITY FOR ACTS OF AGENT. * * * A Trustee who employs an agent in the administration of the trust * * * is not liable to the beneficiaries for losses resulting from the improper conduct of the agent, unless the Trustee himself is guilty of a breach of trust. * * *

"Accordingly if in the administration of the trust the Trustee properly employs an agent who negligently loses trust property entrusted to him, or misappropriates such property or otherwise causes a loss to the trust estate the Trustee is not liable to the beneficiaries for the loss." (Scott, Vol. 2, p. 1190.)

The Entire Original Argument Rehashed.

Pages 4 to 14, inclusive, of the Petition contain a repetition and rehash of the Appellees' entire original Argument in their Briefs. All the cases mentioned in the Petition for Rehearing were cited and discussed in the Briefs, and on the oral argument, with the exception of two cases.¹ The cases again discussed in the Petition for Rehearing are:

Magruder v. Drury, 235 U. S. 106, 59 L. Ed. 151 (1914) (p. 4).

Jackson v. Smith, 254 U. S. 586, 65 L. Ed. 418 (1921) pp. 4, 5).

In re Breger Kosher Sausage Co., 129 F. (2d) 62 (C. A. 7, 1942) (p. 7).

U. S. v. Howard, 96 F. (2d) 893, 896 (C. A. 7, 1938) (p. 7).

Carson Pirie Scott & Co. v. Turner, 61 F. (2d) 693 (C. A. 6, 1932) (p. 8).

In re Curtis, 76 F. (2d) 751 (C. A., 2, 1935) (p. 9).

Ex parte Belchier, 1 Amb. 218; 27 Eng. Reprint 144 (p. 11).

Speight v. Gaunt, 22 Ch. 727 (p. 11).

Evans v. Williams, 276 Fed. 650 (p. 11).

In re Marcus, 2 F. Supp. 524 (p. 11).

Meinhard v. Salmon, 249 N. Y. 458 (1928).

¹ The two cases referred to, which are cited by Appellees for the first time in this Petition for Rehearing, are *Brophy v. Cities Service Co.*, 70 A. 2d 5 (Del. Ch., Dec. 1949), and *In re Norcor Mfg. Co.*, 109 F. 2d 407 (C. A. 7, 1940). We will discuss these two newly cited cases later in this Answer.

We respectfully submit that there is nothing in the Petition concerning any one of these cases which we think calls for extensive comment in this Answer, although we do wish to refer to one particularly irrelevant case which has again been brought in by Petitioners.

At Page 13 of the Petition, the Appellees refer again to the case of *Meinkard v. Salmon*, 249 N. Y. 458 (1928). We have heretofore pointed out and emphasized that this case did not arise in a Bankruptcy proceeding at all; that no question of the law of Bankruptcy Trustees was involved; and that it was entirely a case of alleged fraudulent conduct on the part of one of the parties to a large real estate transaction. That case cannot sensibly be cited for any rule of law arising in the case at Bar.

An Extravagant Proposition of Law.

The concluding paragraph of the Petition convincingly shows that the entire effort of the Appellees in this case is to establish a new doctrine of law with respect to the liability of Bankruptcy Trustees in connection with the conduct of their employees. That objective is clear because they say with reference to the Opinion of this Court:

"If permitted to stand, the decision might have a serious widespread and deleterious effect upon the standard of ethics generally followed in the administration of trusts throughout the country * * *."

That, we say, is an extravagant and fanciful contention which we feel requires no reply from the Appellant

here. We believe this Court realized the full effect of its Opinion at the time it was written, and that the implied criticism of that Opinion in the above quotation is entirely unjustified.

The Two New Cases Cited in the Petition.

At Page 5 of the Petition, one of the two cases cited for the first time, by the Appellee is *In re Norcor Mfg. Co.*, 109 F. 2d 407 (C. A. 7, 1940). We submit that a mere reading of what the Petitioner says about that case shows it has no pertinency in the *Darrow* case whatever. Darrow never has taken the position that because some of the alleged profits of Kulp and Johnson came to them indirectly through the operations of "a corporation", that such fact made any difference as far as his liability is concerned.

The case of *Brophy v. Cities Service Co.*, 70 A. 2d 5 (Del. Ch., Dec. 1949) cited in a footnote at the bottom of Page 5 in the Petition involved the question of alleged fraudulent profits made by an employee of a corporation who occupied a position of trust in purchasing stock of the corporation on the open market because of his confidential knowledge that the corporation itself secretly intended to buy large blocks of such stock. An examination of the Court's opinion in that case in the light of the facts clearly establishes that it is not relevant to the issues before this Court.

A Mis-statement With Respect to the Facts of the Case.

At Page 10 of the Petition, Appellees attempt to argue that "the cases cited in support of the Court's Opinion in the instant case * * * have no application to the present situation". This is followed by the statement that Darrow's employees "*were realizing profits at the expense of the public security holders and the trust estates*". (Italics added.) There is absolutely nothing in the Record to justify or sustain that charge. The "public security holders" sold their securities on the open market to Darrow's employees, and in many instances directly to Darrow himself, at the going market prices. They were under no compulsion to sell; they were not misled to any extent; and, therefore, there were no "profits made at their expense". Further than this, if Darrow were to be surcharged here, no part of that surcharge could possibly result in any benefit to these "public security holders" referred to in the Petition. These security holders are entirely out of this case and why they have been brought in at this time in the Petition for Re-hearing does not appear.

As to the "profits at the expense * * * of the Trust Estates", the Record is replete with evidence that the Estates in this case made very substantial profits instead of sustaining losses.

It is respectfully submitted that the Petition for Re-hearing should be denied.

URBAN A. LAVERY,

IRVING HERRIOTT,

Attorneys for Appellant, Darrow.

September 18, 1950.

And afterwards, to-wit, on the twenty-first day of September, 1950, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

Tuesday, September 21, 1950.

Before:

**Hon. Otto Kerner, Circuit Judge.
Hon. F. Ryan Duffy, Circuit Judge.
Hon. Philip J. Finnegan, Circuit Judge.**

**In the Matter of Federal Facilities
Realty Trust and National Realty
Trust,**

Debtors.

**Paul E. Darrow, Former Trustee,
Appellant,**

9935

vs.

**Stacy C. Mosser, Successor
Trustee, et al.,**

Appellees.

**Appeal from the
United States Dis-
trict Court for the
Northern District
of Illinois, Eastern
Division.**

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, Denied.

And afterwards, to-wit, on the twenty-ninth day of September, 1950, the mandate of this Court issued to the United States District Court for the Northern District of Illinois, Eastern Division.

And afterward, to-wit, on the thirty-first day of October, 1950, there was filed in the office of the Clerk of this Court a designation of record which said designation of record is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

No. 9935.

In the Matter of Federal Facilities
Realty Trust, a common law
trust, and National Realty Trust,
a common law trust,

Debtors.

Paul E. Darrow, Former Trustee,
Appellant,

vs.

Stacy C. Mosser, Successor
Trustee, *et al.,*

Appellees.

Appeal from the
United States Dis-
trict Court for the
Northern District
of Illinois, Eastern
Division.

DESIGNATION OF RECORD.

Mr. Kenneth J. Carrick
Clerk, United States Court of Appeals
1212 Lake Shore Drive
Chicago 10, Illinois

Will you kindly prepare a certified transcript of the record in the above entitled cause, including the proceedings in this court, in connection with a petition to the Supreme Court of the United States for writ of certiorari to this court in the above entitled cause, including therein the following, to-wit:

1. Printed record in the Court of Appeals.
2. Minute entry showing arguments of cause.
3. Order of April 17, 1950, taking cause under advisement.
4. Opinion and judgment of the court entered August 14, 1950.

Designation of Record.

729

5. Order entered August 25, 1950, extending time to file petition for rehearing.
6. Petition for rehearing filed September 11, 1950.
7. Answer to petition for rehearing filed September 20, 1950.
8. Order entered September 21, 1950, denying rehearing.
9. Reference to issue of mandate.
10. This designation of record.
11. Clerk's certificate.

Stacy C. Mosser, Successor Trustee
of Debtors,

Appellee,

By C. W. Mulfinger,
J. Edgar Kelly,

His Attorneys.

Received a copy of the above and foregoing designation
of record this 30th day of October, A. D. 1950.

Irving Herriott,
Urban A. Lavery,

*Attorneys for Paul E. Darrow,
Appellant.*

Securities and Exchange Commission,

By Roger S. Foster,
Thomas B. Hart,
J. Kirk Windle,

*Attorneys for Securities and Ex-
change Commission.*

Jacob B. Courshon,
David J. Ratner,

*Attorneys for John W. Guild,
Indenture Trustee.*

Endorsed: Filed Oct. 31, 1950. Kenneth J. Carrick,
Clerk.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the papers filed and proceedings had, made in accordance with the designation of record, filed October 31, 1950, in:

In the Matter of Federal Facilities Realty Trust, a Common Law Trust, and National Realty Trust, a Common Law Trust,

Debtors.

Cause No. 9935.

Paul E. Darrow, Former Trustee,

Appellant,

vs.

Stacy C. Mosser, Successor Trustee, *et al.*,

Appellees,

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 8th day of November, A. D. 1950.

(Seal)

Kenneth J. Carrick,
*Clerk of the United States Court of
Appeals for the Seventh Circuit.*



SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 461

ORDER ALLOWING CERTIORARI—Filed February 26, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The case is transferred to the summary docket. Further consideration of the motion to substitute parties petitioner is postponed to the hearing of the case on the merits.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Burton took no part in the consideration or decision of this application.

(3517)

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CHARLES T. MOSS

**IN THE
Supreme Court of the United States**

OCTOBER TERM, 1950.

No. 461

IN THE MATTER OF

**FEDERAL FACILITIES REALTY TRUST; A COMMON
LAW TRUST, AND NATIONAL REALTY TRUST, A
COMMON LAW TRUST,**

DEBTORS.

**STACY C. MOSSER, SUCCESSOR TRUSTEE OF NATIONAL
REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST, AND
JOHN W. GUILD, INDENTURE TRUSTEE, ETC.,**

Petitioners,

vs.

**PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY
TRUST AND FEDERAL FACILITIES REALTY TRUST,**

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT, AND BRIEF IN SUPPORT
THEREOF.**

**CARL W. MULFINGER,
J. EDGAR KELLY,
JACOB B. COURSHON,**

Counsel for Petitioners.

**STANLEY A. KAPLAN,
Of Counsel.**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1950.

No. _____

IN THE MATTER OF

**FEDERAL FACILITIES REALTY TRUST, A COMMON
LAW TRUST, AND NATIONAL REALTY TRUST, A
COMMON LAW TRUST,**

DEBTORS.

STACY C. MOSSER, SUCCESSOR TRUSTEE, ET AL.,

Petitioners,

vs.

PAUL E. DARROW, FORMER TRUSTEE,

Respondent.

PETITION FOR WRIT OF CERTIORARI

*To the Honorable Justices of the Supreme Court of the
United States:*

The petition of Stacy C. Messer, successor trustee of Federal Facilities Realty Trust and National Realty Trust, two common law trusts, and John W. Guild; trustee under the indenture securing the collateral trust bonds of Federal Facilities Realty Trust, for writ of certiorari to the Court of Appeals for the Seventh Circuit in the above entitled cause, respectfully shows to this Honorable Court:

SUMMARY STATEMENT OF THE MATTER INVOLVED.

These petitioners filed objections to the final accounts of Paul E. Darrow, the former trustee of Federal Facilities Realty Trust and National Realty Trust, in the proceedings for the reorganization of each of said trusts. Objections were also filed by the Securities and Exchange Commission. The proceedings for the reorganization of both Federal Facilities Realty Trust and National Realty Trust were filed in December, 1934, and, upon approval of the petitions, Paul E. Darrow was appointed trustee of each trust, which position he held until he resigned on August 10, 1943, and Stacy C. Mosser was appointed as successor trustee of each debtor.

The final accounts of the former trustee, and the objections thereto, were referred by the District Court to a special master. The report of the special master sustained the objections to the trustee's accounts insofar as they sought to surcharge the trustee with profits made by two of his employees who were permitted to trade in trust securities consisting of bonds issued by the subsidiary corporations of the debtor trusts. The profits so made by these employees aggregated \$43,447.46.

The report of the special master was approved by the District Court and the former trustee surcharged with said profits; a ruling on all other objections to the trustee's accounts was reserved pending further proceedings. From this order of the District Court, the former trustee appealed, and the Court of Appeals for the Seventh Circuit reversed the order of the District Court insofar as it surcharged Darrow with the profits made by his employees; in all other respects the order was affirmed.

Federal Facilities Realty Trust and National Realty

Trust, the debtors, are common law trusts which were created by declarations of trust dated, respectively, September 10, 1929, and July 2, 1930. The original trustees of each trust were Jacob Kulp, Lee H. Kulp, and Myrtle Johnson. In the 1920's, Jacob Kulp and Company, Inc. (now bankrupt) organized, promoted and controlled twenty-six building corporations, the properties of most of which were leased to the United States Government for post office use. The buildings were financed by the sale of bonds to the public, while all the capital stock in each instance was issued to Jacob Kulp. In addition, Jacob Kulp owned in fee certain premises in Los Angeles upon which a building was constructed for post office use. The twenty-seven properties were subject to large issues of first mortgage bonds and, in many instances, subject to second mortgages as well. Confronted with cancellations, modifications of leases, and a decrease in rentals, the promoters established these common law trusts and attempted to persuade the holders of bonds of subsidiaries to exchange their securities for bonds or certificates of beneficial interests of the trusts. All of the capital stock of fourteen of the building corporations was transferred by Kulp to Federal Facilities Realty Trust in exchange for one hundred thousand shares of beneficial interest and three hundred thousand dollars, face value, collateral trust bonds issued by said trust. All of the stock of twelve of the building corporations, plus the fee in the Los Angeles property, was transferred by Kulp to National Realty Trust in exchange for twenty thousand shares of beneficial interest (R. 159, 181).

The evidence presented to sustain the objections to Darrow's accounts disclosed that after his appointment as trustee, he occupied the former offices of the trusts and employed Jacob Kulp and Myrtle Johnson to assist him in his duties. They were familiar with the business, hav-

ing been in control of these trusts and corporations since their creation. Jacob Kulp was employed to manage the buildings owned by the subsidiary corporations of each trust, and had access to the books and records of the trusts and their subsidiaries. Myrtle Johnson's duties were numerous. She had complete supervision of the trustee's office, access to all books and records, acted in behalf of the trustee when bondholders came to his office or made inquiry by telephone, advised the trustee on all phases of management, assisted him in the reorganization of the subsidiary corporations, and in determining the prices the trusts or the subsidiary corporations should pay for bonds (R. 188, 199-200, 202, 203, 206). While so employed, Kulp received a salary of three hundred dollars per month plus the use of an apartment (R. 182), and Miss Johnson was paid two hundred fifty dollars per month (R. 169).

Jacob Kulp and Company and Colonial Securities Company, two corporations wholly owned and controlled by Jacob Kulp and Myrtle Johnson and members of the Kulp family, occupied the same or adjoining offices with the trustee. For most of the time in question this joint office had two entrances, one marked Colonial and the other with the name of the debtor trusts, both opening into one large room. Darrow and Colonial were listed under one telephone number and their books kept by an employee of the trustee. Miss Johnson, although allegedly rendering some services to Kulp and Company and Colonial, occupied a private office in the portion of the suite occupied by the trustee. Bondholders coming to the office of the trustee were usually referred to Miss Johnson (R. 150-152, 200-202).

While so employed, Miss Johnson and Kulp, individually, and in the name of Colonial Securities Company, intercepted and purchased bonds brought into the trustee's office by bondholders seeking to sell them. Miss Johnson

and Kulp would purchase these bonds for less than Darrow was paying, and then sell them to Darrow or some outside investor at a profit. Darrow at all times had knowledge of these dealings and made no objection to them; in fact, he encouraged these activities during virtually the entire period of his trusteeship by following the practice of purchasing such bonds for the account of his trusts (R. 188). The total profits thus made by these employees were determined to amount to \$43,447.46. These are the profits which the District Court surcharged against Darrow.

II.

STATEMENT AS TO JURISDICTION.

1. Jurisdiction of this Court to review this case is based upon Section 1254 of the Judicial Code, as revised by the Act of June 25, 1948, (28 U. S. C. 1254), and Section 24 of the Bankruptcy Act, as amended by the Act of June 22, 1938 (11 U. S. C. 47).

2. The decision of the Court of Appeals for the Seventh Circuit was rendered August 14, 1950 and petition for rehearing denied September 21, 1950.

III.

THE QUESTION PRESENTED.

The question presented is whether a trustee in a reorganization proceeding should be surcharged for knowingly permitting his confidential employees, who likewise were fiduciaries, to realize profits from the purchase and sale of securities of his trust.

IV.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

1. The Court of Appeals for the Seventh Circuit has in this case decided an important question of federal law applicable to the administration of bankruptcy proceedings which has not been, but should be, settled by this Court.

2. The Court of Appeals has in this case rendered a decision in conflict with the decision of the Court of Appeals for the Sixth Circuit in *Carson, Pirie, Scott & Co. v. Turner*, 61 F. (2d) 693 (1932).

3. The Court of Appeals has determined in this case that the decision in the case of *Carson, Pirie, Scott & Co. v. Turner* is not applicable to the factual situation presented here, and if that is true, there is no decision by this Court, or any other court, which settles or determines the law on this vital and important issue.

4. The decision of the Court of Appeals, if permitted to stand, will result in a serious impact against, and a diminution of, the high standard of ethics necessarily required in the important and ever-widening field of reorganization proceedings and fiduciary obligations.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, "No. 9935, In the Matter of Federal Facilities Realty Trust, a common law trust, and National Realty Trust, a common law trust, Debtors; Paul E. Darrow, Former Trustee, Appellant vs. Stacy C. Mosser, Successor Trustee,

et al., Appellees”, and that said judgment of the Court may be reversed by this Honorable Court; and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just. And your petitioners will ever pray.

STACY C. MOSSER, Successor Trustee
of Federal Facilities Realty Trust
and National Realty Trust, Debtors,

By CARL W. MULFINGER,
J. EDGAR KELLY,

Counsel for Petitioner.

STANLEY A. KAPLAN,
Of Counsel.

JOHN W. GUED, Indenture Trustee,
By JACOB B. COURSHON,

Counsel for Petitioner.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1950.

No. _____

IN THE MATTER OF

**FEDERAL FACILITIES REALTY TRUST, A COMMON
 LAW TRUST, AND NATIONAL REALTY TRUST, A
 COMMON LAW TRUST,**

DEBTORS,

STACY C. MOSSER, SUCCESSOR TRUSTEE, ET AL.,

Petitioners,

vs.

PAUL E. DARROW, FORMER TRUSTEE,

Respondent.

**BRIEF IN SUPPORT OF PETITION FOR WRIT
 OF CERTIORARI.**

I.

THE OPINION IN THE COURT BELOW.

The opinion in the Court of Appeals for the Seventh Circuit is reported in 184 F. (2d) 1, and appears at pages 675-691 of the Record.

II.

JURISDICTION.

1. Jurisdiction to review this case is based upon Section 1254 of the Judicial Code, as revised by the Act of June 25, 1948 (28 U. S. C. 1254), and Section 24 of the Bankruptcy Act, as amended by the Act in June 22, 1938 (11 U. S. C. 47).

2. The decision of the Court of Appeals for the Seventh Circuit was rendered August 14, 1950, and petition for rehearing denied September 21, 1950 (R. 727).

III.

STATEMENT OF THE CASE.

The "Summary Statement of The Matter Involved," contained in the petition, is a recital of such facts as are deemed necessary to apprise this court of the question involved and will not be repeated here.

IV.

SPECIFICATION OF ERRORS.

The Court of Appeals erred in the following respects:

1. In holding that a trustee should not be surcharged for profits made by his employees who were permitted to deal in securities of his trust if he was not derelict in hiring them in the first instance.

2. In holding that a trustee should not be surcharged for profits made by his employees who were permitted to deal in securities of his trust, if the trustee himself made no profit therefrom.

3. In holding that a trustee should not be surcharged for profits he permitted his employees to make from the sale of such securities to him.

4. In holding that a trustee should not be surcharged for profits he permitted his employees to make from the

sale of such securities to him, providing he paid no more than the "market price."

5. In holding that a trustee should not be surcharged for profits he permitted his employees to make from sales of such securities to him if the securities increased in value after he acquired them.

6. In holding that Darrow acted with the care of an ordinarily prudent man in the management of his own property.

7. In failing to find that Darrow was negligent and derelict in his duty to properly supervise the conduct of his employees.

8. In failing to find that Darrow was negligent in failing to take action to recover the illegal profits made by his employees.

9. In failing to find that the trust estates suffered losses.

10. In reversing the order of the District Court insofar as it surcharged Darrow with the profits made by his employees.

11. In reversing findings of fact of the special master, concurred in by the District Court, without a showing that such findings were clearly erroneous.

SUMMARY OF ARGUMENT.

1. The decision of the Court of Appeals is in direct conflict with the decision of the Court of Appeals for the Sixth Circuit in the case of *Carson, Pirie, Scott & Co. v. Turner*, 61 F. (2d) 693.

2. The Court of Appeals in this decision has set aside the concurrent findings of fact of the special master and the District Judge, without finding them to be clearly erroneous.

3. A trustee who permits his confidential employees to trade in the securities of his trust violates his fiduciary duty and should be surcharged for the profits realized by such employees.

ARGUMENT.

Point I.

The Decision of the Court of Appeals Is in Direct Conflict With the Decision of the Court of Appeals for the Sixth Circuit in the Case of Carson, Pirie, Scott & Co. v. Turner, 61 F. (2d) 693.

It is not disputed that Darrow knowingly permitted his confidential employees to deal in the securities of his trust at a profit to themselves, but the Court of Appeals has held he was not guilty of a breach of trust in so doing. Under the law as established by the Court of Appeals for the Sixth Circuit, a trustee may be surcharged for the value of goods taken by his employee if he knew, or by the exercise of reasonable diligence could have known, of the defalcations.

In *Carson, Pirie, Scott & Co. v. Turner*, 61 F. (2d) 693 (C. C. A. 6, 1932), one Paul, an auctioneer employed by a trustee in bankruptcy, misappropriated considerable merchandise over a period of time. On the theory that the defalcations were made possible by the negligence of the trustee, the opinion directed that the compensation paid Paul be disallowed in the trustee's account and that the trustee be surcharged with the value of the goods taken so far as ascertainable.

In that case, the court stated at page 694:

“The proper administration of the bankrupt's estate in the interest of creditors required that the trustee exercise reasonable diligence in the performance of his duties. Had he done so, it is inconceivable that he would not have learned of the practices of Paul in appropriating to his own use much of the most valuable merchandise. When evidence of that circumstance

was placed in his hands, he inexcusably failed to act. In spite of this, the referee found that he had discharged his duties faithfully and approved his accounts, allowing the man who had misapplied a part of the assets a large fee for his services and allowing the trustee, who negligently failed to perform his duties, the maximum amount authorized under the acts relating to bankruptcy. We find nothing in the record to support the referee's finding that the trustee faithfully performed his duty, and we hold, as a matter of law, that the order approving his accounts based upon such finding is erroneous."

The Court of Appeals in the case at bar stated in its opinion that the Securities & Exchange Commission cited "no case which supports, or even tends to support, the surcharges made against Darrow," and that the successor trustee cited no authority to sustain the statement that a trustee should be surcharged for allowing his employees to make profits which he could not himself make in equity (R. 689-90). The Carson, Pirie, Scott case was cited to the Court of Appeals, and if it is not applicable to the instant case, then there is no decision by this, or any other court, which settles the law on this issue. We submit, however, that the decision in the Carson, Pirie, Scott case is applicable and that the decision in this case is in conflict therewith.

Point II.

The Court of Appeals in This Decision Has Set Aside Concurrent Findings of Fact of the Special Master and the District Judge Without Finding Them to Be Clearly Erroneous.

In the decision in this case, the Court of Appeals has reversed findings of fact made by the special master and concurred in by the District Court, without showing such

findings to be clearly erroneous. The special master found that:

"A trustee cannot be said to have exercised due care where he knowingly allows his employees to work for him under conditions where their loyalties must necessarily be divided.

"(1) In this respect, Mr. Darrow was clearly derelict in entering into an agreement with Miss Johnson and Mr. Kulp whereby they were granted permission to continue their securities business, which, as he surely must have known, dealt extensively in the securities of the trusts and their subsidiaries. A reasonably careful and prudent man could hardly fail to recognize the obvious fact that a situation wherein the trusts and their subsidiaries were attempting to retire their indebtedness as rapidly and as inexpensively as possible, and wherein the employees of the trusts were trafficking in the bonds of the subsidiaries for profit was pregnant with potential conflicts of interest."

and further:

"It is clear that Mr. Darrow failed to take any action at all upon discovering that his employees were dealing in the underlying securities for profit. On the contrary, the record indicates that he not only acquiesced in such activity and permitted disloyalty to flourish, but also knowingly purchased securities from them and thereby allowed their infidelity to inflict direct financial loss upon the trusts in many instances." (R. 553-554.)

The Courts of Appeals reversed this finding in the following words:

"If after such employment Darrow was obliged to exercise 'the care of an ordinarily prudent man in the management of his own property,' it is difficult to see why he should be surcharged under the facts disclosed in this case. His supervision of the trust estate would disclose that the debtor trusts were being largely benefited by the fact that he was enabled to purchase from

such part time employees at market prices; the securities of their subsidiaries." (R. 685.)

By its action, the Court of Appeals has ignored the well-established principle that concurrent findings of fact by a special master and District Judge will not be set aside on appeal except for clear mistake or unless the record discloses them to be clearly erroneous (*Cranford v. Neal*, 144 U. S. 585; *In re Willoughby*, 95 F. (2d) 932; *Boyce v. Chemical Plastics, Inc.*, 175 F. (2d) 839; *Crimmins v. Woodson*, 177 F. (2d) 788; Rule 52 (a) of Federal Rules of Civil Procedure.

The necessary requisites for setting aside findings of fact are not present in the instant case.

We, therefore, respectfully submit that it was error for the Court of Appeals to reverse the aforesaid findings of the master concurred in by the District Court.

Point III.

A Trustee Who Permits His Employees to Trade in the Securities of His Trust Violates His Fiduciary Duty and Should Be Surcharged for the Profits Realized by Such Employees.

Petitioners' contention, that the former trustee should be surcharged for profits he permitted his employees to make by trading in securities of his trusts, is predicated upon the proposition that Miss Johnson and Kulp were trusted employees in strategic positions and, therefore, owed to their employer and the trusts the duties of fiduciaries. When these employees traded in the securities associated with the debtor trusts, they reached that fiduciary duty, and because the trustee had knowledge of and acquiesced in the acts of his employees, he became liable to the surcharge.

Thus, two confidential and trusted employees of a trustee appointed by a federal court were permitted to deal in securities of his trusts in their own names and, at times, in the name of a corporation controlled by them and which they operated from the same office as that occupied by the trustee. Colonial Securities Company was not a corporate fiction used to conceal trading transactions from the trustee; he knew it was buying and selling securities of the trusts (R. 203).

Darrow had full knowledge that his employees were dealing in the securities, and it is not contended that any of the facts were concealed from, or unknown to, him. These trading transactions fell into three definite patterns. (1) the employees intercepted and purchased bonds which were brought to the office of the trustee for sale, paying prices lower than those which they knew the trustee would pay, and resold them to the trustee the same day, or a short time thereafter, at the trustee's higher price (R. 296); (2) the employees, after purchasing the bonds from parties bringing them to the office of the trustee, sold them elsewhere at a profit (R. 275); and (3) the employees used trust funds obtained from Darrow to purchase securities at prices far below those being paid by the trustee for the same securities, and then delivered to the trustee a portion of the bonds at the prices he was paying to outsiders to absorb the trust money so advanced and sold the remaining securities elsewhere at a substantial profit to themselves (R. 171-5, 205, 431).

The facts in this case created an intense fiduciary relationship on the part of Kulp and Miss Johnson, requiring fidelity of the highest order. The trust estates had the right to command the undivided fealty of Miss Johnson and Kulp (*Fleishhacker v. Blum*, 109 F. (2d) 543 (C. C. A. 9, 1940). With all confidential information either in their possession or available to them, and with operational and

administrative problems entrusted to their care, Miss Johnson and Kulp were subject to the stringent duties of fiduciaries; as stated in *Trice v. Comstock*, 121 F. 620 (C. C. A. 8, 1903), at page 623:

"* * * every relation in which the duty of fidelity to each other is imposed upon parties by the established rules of law is a relation of trust and confidence. The relation of trustee and cestui que trust, principal and agent, client and attorney, employer and an employee, who through the employment gains either an interest in or a knowledge of the property or business of his master, are striking and familiar illustrations of the relation. From the agreement which underlies and conditions these fiduciary relations, the law both implies a contract and imposes a duty that the servant shall be faithful to his master, the attorney to his client, the agent to his principal, the trustee to his cestui que trust, that each shall work and act with an eye single to the interest of his correlate, and that no one of them shall use the interest or knowledge which he acquires through the relation so as to defeat or hinder the other party to it in accomplishing any of the purposes for which it was created."

Under accepted equitable principles, a fiduciary is precluded from realizing a profit out of his trust position (*Magruder v. Drury*, 235 U. S. 106 (1914); *Michoud v. Girod*, 45 U. S. 503 (1846)); and this precept is applied particularly to transactions in property or securities connected with the trust (*Jackson v. Smith*, 254 U. S. 586 (1921)).

Darrow's conduct in permitting his employees to trade in the securities of the trust, and thereby violate their fiduciary obligations, was a direct violation of his fiduciary duty as trustee. Conduct such as this fits within the following language contained in *Scott The Law of Trusts* (1939 Ed.), Volume II, Section 225.1, pp. 1191-2:

Where the trustee is himself at fault. The trustee is liable for the acts of an agent employed by him in the administration of the trust if the trustee is himself guilty of a violation of a duty to the beneficiaries. Thus where an agent does an act which, if done by the trustee would constitute a breach of trust, the trustee is liable if he directed or permitted the doing of the act. He is liable if he improperly delegates to an agent the performance of acts which he was under duty personally to perform. He is liable for the act of an agent employed by him in the administration of the trust, if he did not use reasonable care in the selection or retention of the agent. The trustee is liable for acts of the agent if the trustee has failed to exercise proper supervision over the conduct of the agent. He is liable if he unnecessarily entrusts money or securities of the trust or title deeds or other property to an agent, or permits the agent unnecessarily to retain the property, with the result that the agent misappropriates it. He is liable where the agent does an act which if done by the trustee would be in breach of trust, if the trustee approved or acquiesced in or concealed the act of the agent. The trustee is liable if the agent does an act which if done by the trustee would be in breach of trust, if he does not take proper steps to compel the agent to redress the wrong."

There is no other effective sanction available to the court, and, consequently, it is imperative that trustee Darrow be surcharged in accordance with the order of the District Court for knowingly permitting his employees to engage in improper conduct. These principles are affirmed in the *Restatement of the Law of Trusts, Vol. I, Section 225, page 639*, as follows:

"Section 225. Liability for Acts of Agents.

(1) Except as stated in Subsection (2), the trustee is not liable to the beneficiary for the acts of agents employed by him in the administration of the trust.

(2) The trustee is liable to the beneficiary for an act of such an agent which if done by the trustee,

would constitute a breach of trust, if the trustee

- (a) directs or permits the act of the agent; or
- (b) delegates to the agent the performance of acts which he was under a duty not to delegate; or
- (c) does not use reasonable care in the selection or retention of the agent; or
- (d) does not exercise proper supervision over the conduct of the agent; or
- (e) approves or acquiesces in or conceals the act of the agent; or
- (f) neglects to take proper steps to compel the agent to redress the wrong."

It is not disputed that the trustee would have been guilty of a breach of trust if he had purchased and sold securities of the trust with a resulting profit to himself. The facts in this case, therefore, bring the trustee within the rule that he will be held liable for permitting his employees to gain profits which he could not, for the following reasons:

1. He not only permitted the illegal acts of his employees but collaborated in such acts by purchasing securities from the employees at prices which resulted in profits to the employees and losses to his trust estate.

2. The trustee did not use reasonable care in the retention of these employees because he knew at all times that his employees were engaged in the acts complained of.

3. The trustee did not exercise proper supervision over the conduct of his employees. Having full knowledge of their acts, it became his duty to require them to discontinue their illegal practices.

4. The trustee approved and acquiesced in the illegal acts of his employees.

5. The trustee failed to take any steps to compel these employees to redress the wrongs done by them.

The Court of Appeals laid considerable stress on the fact that the bonds purchased by Darrow from his employees increased in value. The fact that these bonds, as well as real estate securities in general, increased in value during the years 1935 to 1943 was attributable to general economic conditions, and such enhancement cannot serve to absolve the trustee from liability for failure to carry out his fiduciary responsibilities. Such enhancement, even if it were due to Darrow's efforts, is no defense to a surcharge, because if the trustee's acts were unlawful "it makes no difference that the estate was not the loser in the transaction." *Magruder v. Drury*, 235 U. S. 106.

Further, in support of the finding that the trusts suffered no loss, the Court of Appeals found that Darrow purchased bonds from his employees at "market prices." The evidence clearly shows that "market prices" were those prices fixed by Darrow and Miss Johnson (R. 211).

In reversing the order of the District Court, the Court of Appeals has cited *In re Breger Kosher Sausage Co.*, 129 F. (2d) 62. In that case a creditor sought to surcharge a trustee for losses incurred in the operation of the bankrupt's business. A reading of the decision in that case discloses that there was no attempt made to surcharge the trustee for profits made by his employee in the operation of a sideline business, as is erroneously stated and assumed by the Court of Appeals in the opinion in the instant case (R. 688). All that the Court of Appeals for the Seventh Circuit decided in the Sausage Company case was that the evidence presented to the referee was insufficient to surcharge the trustee for losses incurred in the operation of the bankrupt's business, or to sustain the charge that he concealed an antagonistic interest to his trust. The court, therefore, refused to reverse findings of the referee.

The Court of Appeals also cited *Ex parte Belchier*, 1

Amb. 218 (27 Eng. Reprint 144); *Speight v. Gaunt*, 22 Ch. 727; *Evans v. Williams*, 276 Fed. 650; and *In re Marcus*, 2 Fed. Sup. 524. In each of these cases, the illegal acts of the agents or employees were concealed from the trustee and he was powerless to prevent the losses. However, in the instant case, the trustee had full knowledge of his employees' repeated breaches of trust and permitted them to continue. We, therefore, submit that the Court of Appeals has extended the doctrine of immunity which protects a non-negligent trustee to absolve a trustee who has knowingly permitted acts of misconduct.

The public importance of the issue involved renders it imperative that this court make it clear that a reorganization trustee will be held to "a high degree of both moral and legal responsibility" and that his obligations as a trustee must be rigorously enforced. The Court of Appeals for the Seventh Circuit in the instant case has departed from those general principles governing the obligations and responsibilities of fiduciaries as laid down by this court in the cases of *Taylor v. Standard Gas & Electric Co.*, 306 U. S. 307; *Pepper v. Litton*, 308 U. S. 295; *American United Mutual Life Ins. Co. v. Avon Park*, 311 U. S. 138; and *Woods v. City National Bank & Trust Co.*, 312 U. S. 262. The District Court in the case of *In re Los Angeles Lumber Products Co.*, 46 F. Supp. 77, in following the principles laid down by this court in the above cases, said at page 91:

"All of these Supreme Court cases hold fiduciaries to strict standards of conduct, including officers, directors, controlling stockholders of corporations, bondholders committees, etc., and made it clear that the equitable powers of a bankruptcy court are sufficient to provide an appropriate remedy for violation of these standards."

If the decision of the Court of Appeals is permitted to stand, reorganization trustees will not be held to as high a standard of conduct as that which this court has fixed

for officers, directors, controlling stockholders of corporations, and bondholders' committees. This court has recognized that the high standards demanded of fiduciaries must not be lowered (*Magruder v. Drury*, 235 U. S. 106; *Manufacturers Trust Company v. Becker*, 338 U. S. 304).

The Circuit Court of Appeals has in effect held in this case that a court is powerless to deal with its appointed trustee who has not only indulged, but actively assisted his employees, in violating their fiduciary duties to the estate. This question not having been heretofore decided by this court, it is, therefore, not only important, but vitally necessary, that this court grant certiorari in this case and finally reverse the decision of the Court of Appeals and thereby preserve the "uncompromising rigidity" which "has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions" (*Meinhard v. Salmon*, 249 N. Y. 458).

CONCLUSION.

In conclusion, we respectfully submit that the decision of the Court of Appeals, if permitted to stand, will remove an effective sanction against the pernicious practice in bankruptcy reorganization proceedings of permitting confidential employees to profit in the securities involved in the reorganization. The decision of the Court of Appeals, if permitted to stand, will have a serious, widespread, and deleterious effect upon the standard of ethics and the rules and legal principles which have heretofore governed the conduct of fiduciaries in the administration of all trusts. No trustee should be permitted knowingly to allow his key employees to take improper advantage of their positions, while the trustee, to whom courts and beneficiaries look for ultimate responsibility, is absolved from blame and liability.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers and, to such end, a writ of certiorari should be granted, and this court should review the decision of the Court of Appeals for the Seventh Circuit and should finally reverse it.

Respectfully submitted,

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IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1950.

No. 461

In the Matter of

FEDERAL FACILITIES REALTY TRUST, a Common
Law Trust, and **NATIONAL REALTY TRUST**, a Com-
mon Law Trust,

Debtors,

STACY C. MOSSER, Successor Trustee of National
Realty Trust and Federal Facilities Realty Trust and
JOHN W. GUILD, Indenture Trustee, etc.,

Petitioners,

VS.

PAUL E. DARROW, Former Trustee of National Realty
Trust and Federal Facilities Realty Trust,

Respondent.

**BRIEF OF RESPONDENT PAUL E. DARROW, FOR-
MER TRUSTEE IN BANKRUPTCY IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT.**

STATEMENT OF THE CASE.

The "Summary Statement of the Matter Involved" in the Petition for Certiorari is biased and quite obviously slanted to suit the contentions of the petitioners. It also omits reference to a number of important and significant facts. We propose to correct some of those matters in the following Statement of the Case.

Paul E. Darrow, the Respondent, as Trustee of the two trusts here involved, was surcharged by the District Court in the amount of \$43,447.46 on account of alleged profits by two of his part-time employees, Myrtle Johnson and Jacob Kulp. These "profits" arose out of their sales of various bonds and other underlying securities of twenty-seven subsidiary corporations whose stock was owned by the two trusts—not only to Darrow as Trustee, but to numerous private customers of their Brokerage concern, the Colonial Securities Co.

There is no contention by petitioners that Darrow personally participated in or realized any profits from the transactions of his two part-time employees. During the more than eight years in which the transactions complained of took place, Darrow, as Trustee of Federal and National, purchased a large number of the bonds of the subsidiary corporations at depreciated prices from Johnson and Kulp, through the Colonial Securities Co., an independent securities company which they controlled.

With respect to the total surcharge against Darrow, the Court of Appeals made the following breakdown:

A.

"Sales by Employees Direct to Darrow

Profits on sales for account
of Federal\$ 4,051.60

Profits on sales for account
of National 4,572.50

Total profits on these sales to
Darrow \$ 8,624.10

B.

Sales by Employees to General
Public

Profits on sales of Federal
securities to general pub-
lic\$10,044.36

Profits on sales of National
securities to general pub-
lic 14,077.50

Total profits on sales to public 24,121.86

C.

Surcharge against Darrow for alleged
profits to employees in Seligman trans-
action \$10,701.50

Grand total surcharges against Darrow.. \$43,447.46"

It will thus be seen that on the sales of bonds made by Johnson and Kulp to Darrow, as Trustee, directly or through Colonial, they realized over the eight-year period an alleged profit of only \$8,624.10, or slightly over \$1,000 per year. The balance of the surcharge against Darrow, as found by the trial Court, was based on alleged profits made by these part-time employees on sales of bonds to various members of the public generally, who were total strangers to the two trusts.

With reference to the employment of Johnson and Kulp, the Court of Appeals made the following finding:

"After the appointment and qualification of Darrow, the former trustee, George Andresen, recommended to him that he employ Jacob Kulp and Myrtle Johnson to assist him. It was pointed out that they were well qualified to assist because of their intimate knowledge of the workings of the trusts and their subsidiaries. However, Miss Johnson and Kulp made it clear that

they would remain as part-time employees only on condition that they be allowed to continue to operate in the securities business through Colonial Securities Company. Darrow employed them on a part-time basis, and they continued to operate Colonial, in the same way that had been practised during their employment by the Andresen trust."

Large Profits to Both Estates Because of Services of Kulp and Johnson.

Largely because of the valuable assistance given to him by Miss Johnson and Mr. Kulp, Darrow, while Trustee of Federal and National, was able to successfully and satisfactorily reorganize in the bankruptcy court all of the twenty-seven subsidiary corporations owned by said trusts whose financial difficulties had been responsible for Federal and National's bankruptcy proceedings. The Court of Appeals found on this point:

"It was Darrow's policy, as trustee, to acquire by purchase outstanding defaulted bonds of the various subsidiaries. During the eight years of his trusteeship he persevered in that policy and bought from individual bondholders and from dealers in securities, including Colonial operated by Miss Johnson and Jacob Kulp, subsidiary bonds of the total par value of \$2,414,600. Due in large part to these purchases, the obligation of the subsidiaries (which were principally outstanding bonds) were reduced, during his eight years of trusteeship, from \$7,611,700 par value to \$5,197,100 par value.

These securities were purchased by Darrow partly for the debtor trusts, but the far greater part were acquired for the subsidiaries."

Thus the operations of Darrow's part-time employees have not to any extent whatever damaged the estates of National and Federal; but on the contrary, as the Court of Appeals found, their sales of bonds to Darrow as Trus-

tee benefited both estates by reducing the obligations of their subsidiary companies to the extent of \$2,414,600.00.

Moreover, the Court of Appeals found a large direct benefit to the two trusts themselves, as a result of the services of his employees, Kulp and Johnson. On this further point the Court of Appeals said:

"At the time of his resignation, he held as trustee for Federal and National \$437,800, in principal amount, of bonds which Darrow had acquired at a total cost of \$79,333.80. These bonds, on his resignation, had a market value of \$164,279, and in addition the debtor trusts, Federal and National had received on the bonds purchased for them the sum of \$45,907.15 in interest. Therefore, the appreciation in market value of the subsidiary bonds, plus the interest received thereon, establish as a benefit to the debtor trusts from the transactions in the bonds, which amounts approximately to the sum of \$130,700."

Under the facts it is not surprising that the Court of Appeals felt compelled to reverse the unjust surcharge against Darrow.

ARGUMENT IN OPPOSITION TO PETITION FOR CERTIORARI.

I. THE PETITIONER MOSSER IS NOT A LAWFUL PARTY IN THIS COURT.

The Jurisdictional Statute.

The purported petitioner herein (Mosser as "Successor-Trustee" of the two bankruptcy estates involved) is not, and was not at the time of filing the petition, a "party to any civil . . . case" within the purview of Title 28 United States Code, Section 1254, concerning review by this Court by the "method" of *certiorari*. Accordingly Mosser, as purported "Trustee in Bankruptcy", has no right to invoke the jurisdiction of this Court in this proceeding. The Record shows that at the time the Petition for Certiorari was filed Mosser was not Trustee for either National Realty Trust or Federal Facilities Realty Trust. He had resigned his office as Trustee in each trust long before the date his Petition for Certiorari was filed in this Court.

The Facts as to Mosser Ceasing to Be Trustee.

The records of the District Court show the entry of the following orders covering this Petition for Certiorari: *

1. Order of the District Court entered on November 7, 1949 appointing one Frank Whiston as additional and Co-Trustee with Mosser of the National Realty Trust.

* Printed copies of the Certified Copies of these Orders are attached to this Brief as Appendix A.

The original Certified Copies of these Orders have been filed with the Clerk in these Proceedings.

2. Order of the District Court entered November 7, 1949 appointing one Joseph Schwartz as additional and Co-Trustee with Mosser of the Federal Facilities Realty Trust.
3. Order of the District Court entered October 17, 1950 accepting the resignation of Mosser as Trustee of National Realty Trust.
4. Order of the District Court entered October 26, 1950 authorizing Whiston, as sole Trustee of National Realty Trust, and Schwartz and Mosser, as Trustees of Federal Facilities Realty Trust, to file a Petition for Certiorari in this proceeding.
5. Order of the District Court entered on November 29, 1950 accepting the resignation of Mosser as Trustee of Federal Facilities Realty Trust.

The lawful effect of the Orders of October 17, 1950 (No. 3 above) and November 29, 1950 (No. 5 above) was to put an end forthwith to Mosser's office as Trustee for both National and Federal.

The order of the District Court of October 26, 1950 (No. 4 above) entered after Mosser had ceased to be Trustee of National Realty Trust but while he was still Co-Trustee of Federal Facilities Realty Trust, authorized only Whiston, as the sole Trustee of National, to file a Petition for Certiorari in these proceedings on behalf of National, and authorized Schwartz and Mosser, as Co-Trustees of Federal, to file such Petition on behalf of Federal. However, on December 1, 1950 Mosser also ceased to be Trustee of Federal by virtue of the Order of November 29, 1950 (No. 5 above). Thus the Petition for Certiorari in this Court, which was filed by Mosser on December 18, 1950 on behalf of both National and Federal, was so filed by him two months after he ceased to be Trustee of National and eighteen days after he ceased to be Trustee of Federal. He, therefore, at the time he filed the Petition herein, was a total stranger to these proceed-

ings in both Estates and had ceased to be a lawful or proper "party" to this proceeding within the meaning of the applicable provision of the United States Code to which we have referred above.

The Lawful Trustees Not Before the Court.

Neither Whiston, the lawful Trustee of National, nor Schwartz, the lawful Trustee of Federal, has filed any Petition for Certiorari to review the judgment of the Court of Appeals. They did not join with Mosser and accordingly are not before this Court. Why they did not do so does not appear, and we are at a complete loss to understand the unusual situation presented.

The Bankruptcy Statute on This Point.

That Whiston and Schwartz both had the right to file their petition for certiorari in this proceeding, had they desired to do so, is clearly established by the Bankruptcy Act (11 U. S. C. A., Sec. 24), which provides:

"The death or removal of a receiver or trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint receiver or joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint receiver or joint trustee alone or by such successor."

This Court Without Jurisdiction of This Petition.

Since Mosser is not a party to this proceeding, it seems to be clear that he has no standing to prosecute the Petition for Certiorari, and therefore this Court is without

jurisdiction in the premises. The following cases are clear in their holding to that effect.

Louisiana v. Jack, 244 U. S. 397 (1917).

Ex Parte Leaf Tobacco v. Board of Trade, 222 U. S. 578 (1911).

South Carolina v. Wesley, 155 U. S. 542 (1895).

Guion v. Liverpool London & Globe Ins. Co., 109 U. S. 173 (1883).

Payne et al. v. Niles et al., 20 How. 219 (U. S. 1857).

In view of the fundamental principle involved we think it unnecessary to discuss these cases, on their facts.

II. THE PURPORTED PETITIONER GUILD IS LIKEWISE WITHOUT AUTHORITY OR STANDING TO PRESENT THE PETITION FOR CERTIORARI SINCE HE ALSO IS NOT A "PARTY" WITHIN THE PROVISIONS OF THE SECTION OF THE UNITED STATES CODE ABOVE CITED CONCERNING PETITIONS FOR CERTIORARI IN THIS COURT.

Petitioner Guild, a Mere Intermeddler Here.

Petitioner Guild, admits on the face of the Petition for Certiorari that he is a mere "Indenture Trustee", and *interested only in the Federal Facilities Realty Trust case*. The plain fact is he and his "Indenture" beneficiaries are fully represented by the regularly appointed Bankruptcy Trustee. Therefore he was actually an intermeddler in both the District Court and in the Court of Appeals, even in the Federal Facilities case. He has no interest whatever in the National Realty Trust proceedings.

As we have suggested above, it is a fundamental principle of law that the rights and interests of a mere "In-

denture Trustee" in a Bankruptcy proceeding are fully protected—so far as all litigation is concerned—by the officially appointed Bankruptcy Trustees; just as all other creditors are fully represented and protected by such Trustees. Accordingly, we submit that Guild is not a lawful "party" before this Court even in the Federal Facilities case, within the provisions of the section of the United States Code cited in Point I above, which grants to this Court jurisdiction in matters pertaining to Writs of Certiorari.

While we concede that Guild as Indenture Trustee had the right to intervene in the District Court, he has no right to prosecute this Petition for Certiorari on behalf of the entire estate of Federal Facilities Realty Trust. Just as he would have no right to prosecute a plenary suit on behalf of the estate.

Kulp and Johnson Not Parties to This Proceeding.

The Court of Appeals pointed out that Guild's contentions were really directed against Darrow's two employees, Johnson and Kulp, and said with respect to them:

"They are not parties to nor represented in the proceeding now before the Court."

We feel that it is apparent the Court of Appeals regarded Guild as an interloper and entirely ignored his contentions.

In any event, we submit that Guild (like Mosser), is not a lawful "party" to this Petition for Certiorari, and has no right to invoke the jurisdiction of this Court, by attempting to join in the Petition of Mosser, the purported Trustee.

III. THE SECURITIES AND EXCHANGE COMMISSION IS FORBIDDEN BY STATUTE TO "APPEAL" IN ANY BANKRUPTCY CASE, INCLUDING A PETITION FOR CERTIORARI, YET IT IS THE REAL PROSECUTOR IN THIS PETITION.

The S. E. C. Forbidden to Appeal.

The Bankruptcy Act (Title 11, Bankruptcy, Sec. 608, U. S. C. A.) provides as follows:

"The Securities and Exchange Commission shall, if requested by the judge, and may upon its own motion, if approved by the judge, file a notice of its appearance in a proceeding under this chapter. Upon the filing of such a notice the Commission shall be deemed to be a party in interest with the right to be heard on all matters arising in such proceeding, and shall be deemed to have intervened in respect of all matters in such proceeding with the same force and effect as if a petition for that purpose had been allowed by the judge; *but the Commission may not appeal or file any petition for appeal in any such proceeding.*" (Italics added.)

The S. E. C. in the Court of Appeals.

The Securities and Exchange Commission filed a separate 27 page Brief in the Court of Appeals in opposition to Darrow's Appeal. In his brief Darrow questioned the right of the Commission to appear as a party to the Appeal but did not argue the point. However, during the oral argument one of the judges of the Court of Appeals challenged Counsel for the Commission about its statutory right to appear in that Court. But the point was passed over in the Courts' Opinion, without comment. The General Counsel of the S. E. C. in Washington, and the Regional Administrator in Chicago, both joined in a Petition for Rehearing in the Court of Appeals.

The S. E. C. as the Chief Prosecutor of This Petition for Certiorari.

Notwithstanding the express language of the Bankruptcy Act above quoted, forbidding the Securities and Exchange Commission to make any "appeal or file any petition for appeal", in such a case as this, the Record here shows the S. E. C. is the actual prosecutor of this Petition for Certiorari. In support of our statement in this respect, we have attached to this Brief certain portions of the official "Transcript of Proceedings" before the District Court on October 26, 1950, in connection with the Petition of the Trustees of Federal and National, for leave to prosecute a petition for a Writ of Certiorari in this Court.* From that "Transcript of Proceedings", it appears that Counsel for the Securities and Exchange Commission stated to the District Court that the Commission would "join in this thing"; would "file a supporting Brief" (presumably if the Writ of Certiorari is granted); would undertake the "laboring oar"; would be "prepared to go all the way on this"; would "undertake a major portion of the work involved"; and that its "Solicitor in Washington will argue the Appeal".

We respectfully submit that the Securities and Exchange Commission cannot lawfully do by indirection what Congress has expressly stated it has no right to do directly; namely, to prosecute an "appeal" in Bankruptcy proceedings, "or file any petition for appeal." Yet the S. E. C. has frankly stated that is exactly what it expects and hopes to be able to accomplish on this Petition for Certiorari. The situation presented on this point is one of vital importance and strikes at the very heart of the provisions of the United States Code with respect to Bankruptcy, to which we have referred. The unlawful position of the

* The complete original Certified Copy of that transcript has been filed with the Clerk of this Court.

Securities and Exchange Commission in this particular proceeding is all the more significant and important when, as we have shown, the lawful Trustees of Federal and National (Schwartz and Whiston, respectively) have not filed any Petition for Certiorari in this Court; and when, as we have shown, Mosser, the purported Trustee, is entirely without authority so to do. It is also significant that Guild was apparently invited to join in the Petition of Mosser, when in truth and in fact (as we have shown) Guild is not a "party" entitled to invoke the jurisdiction of this Court. What the answer is to these most unusual facts and proceedings presented by this petition, we do not know; but we earnestly submit that the Petition should be denied, if for no other reason than that it is really the Petition of the Securities and Exchange Commission.

IV. THE LACK OF MERITS IN PETITIONERS' LEGAL ARGUMENT.

We conclude this Brief by pointing out, in summary fashion, the entire lack of merits in the Legal Argument found in the Petitioners' Brief. Before coming to a discussion of the cases and authorities cited by Petitioners, there are two preliminary points to be mentioned, each of which Darrow urged strongly and successfully before the Court of Appeals, and each of which deserves to be strongly pressed in this Court.

District Court's Surcharge Entirely Punitive.

The judgment of the District Court surcharging Darrow in the sum of \$43,447.46 was entirely punitive in its nature; it was a punishment enforced against him personally, without any relation to the factor of loss to the Estates—a

factor which is always an essential and necessary element lying back of every Bankruptcy surcharge.

It is elemental law, we say, that no surcharge either in a Bankruptcy proceeding or in an ordinary proceeding in a Court of Equity, can be sustained unless the beneficiaries have suffered loss because of the wrongful conduct charged against the Trustee. One of the most recent and, we believe, one of the best statements of this rule is found in the language of the Supreme Court of Pennsylvania (1942) in *Miller's Estate*, 26 Atlantic 320. In reversing a surcharge which had been made against the Executor in that case, the Supreme Court of Pennsylvania said, in defining the term "surcharge":

"Surcharge is a penalty for failure to exercise common prudence, common skill, and common caution, in the performance of the fiduciary's duty, *and is imposed to compensate beneficiaries for loss caused by the fiduciary's want of care.*" (Italics added.)

It is essential for every lawful surcharge that there be a loss to the beneficiaries. That element of loss is entirely lacking in the case at bar, where a large profit or benefit to the Estate accrued from the very actions of the employees of the Trustee of which complaint is made.

An Unjustified Attempt to Make "New Law".

It is clear from the Petition and it's supporting Brief filed herein, and from the Transcript of Record attached to this Brief as Appendix B that the obvious purpose—and indeed the only purpose—of those who are really behind this Petition for Certiorari, is to establish "new law" concerning surcharging Trustees. This point is openly admitted by the Brief of the Petitioners (p. 14) where it is argued that if the case of *Carson, Pirie, Scott & Co. v. Turner*, 61 F. (2d) 693 "is not applicable in the

instant case, then there is no decision by this or any other court which settles the law on this issue." We deny that there is no decision in the books "which settles the law on this issue", as opposing Counsel contend. The plain fact about Counsel's theory is that there is no decision in the books which sustains it.

Such seeking after the will-o'-the-wisp of "new law" constitutes a program of theoretical and academic speculation, against which a Trustee in Bankruptcy, in Darrow's position, should not be called upon to defend himself.

In this proceeding Darrow has been compelled to defend himself as Trustee against the unfair surcharge attempted to be adjudged against him first before the Master of the District Court, next before the District Court itself, next before the United States Court of Appeals, and finally in this Court. That prolonged and costly defense is an unjust and improper burden to cast upon him.

A Case Strongly But Mistakenly Relied Upon by Petitioners.

Petitioners' argument begins ("Point I") by strongly but mistakenly relying upon the case of *Carson, Pirie, Scott & Co. v. Turner*, 61 F. (2d) 693. The facts in that case show that the rules of law on which it was decided have no pertinency or application whatever to the *Darrow* case. Nevertheless, that case, in spite of its lack of pertinency, was twice cited in the Brief of the SEC in the Court of Appeals and was strongly urged upon that Court by the SEC in its oral argument and in the Petition for Re-hearing.

When the facts of that case are analyzed, it will be seen that the statement in Petitioners' Brief (p. 13) that the decision of the Court of Appeals in the *Darrow* case "is

in direct conflict" with the *Carson, Pirie, Scott* case, is entirely unjustified. In that cited case, a Trustee in Bankruptcy had employed an auctioneer to sell the merchandise of a department store and had paid him \$2,013.00 for that work. When the Trustee filed his Account, Carson, Pirie, Scott, a creditor, objected to the compensation claimed by the Trustee and to the payment made to the auctioneer. The facts show a sordid situation as distinguished from the *Darrow* case. The auctioneer had stolen merchandise of large value to the Estate while he was serving as an employee of the Trustee. Therefore, the bankrupt estate had suffered a heavy loss. The facts also showed that while the auctioneer was stealing the merchandise from the store, affidavits had been lodged with the Trustee setting out the fact of such stealing, but the Trustee ignored the charges and permitted the auctioneer to continue in his employ. The Court of Appeals, under the circumstances, very properly ordered that the payment which the Trustee had made to the auctioneer be restored to the Estate, and further ordered that no compensation be allowed the Trustee until the question of the value of the goods stolen by the auctioneer had been determined and charged against the Trustee.

When the facts of the *Carson, Pirie, Scott* case are thus understood, it will be seen that the rules of law laid down in the case have no pertinency whatever to the *Darrow* case. In the former case, there was criminal dishonesty on the part of the Trustee's employee and loss to the Estate, and there was proof that the Trustee was warned of that guilty conduct of the employee, but took no action about it.

Petitioners Complain of the Reversal by the Court of Appeals of "Findings of Fact" of the Master and the District Court.

The next major point in Petitioners' Brief (Point II) is to the effect that the Court of Appeals "has set aside" the findings of fact of the Special Master and the District Judge. The fact is that the trial court made no "findings of fact" whatever. The record shows an extended "Memorandum and Order" of the trial court sustaining the surcharge against Darrow which had been recommended by the Master, but which contains no Findings of Fact (Rec. 577). As a matter of fact, the Court of Appeals made its own Findings of Fact, which are set out in its Opinion. It is our understanding that when a Court of Appeals makes Findings of Fact upon which it bases its judgment and decision, the Supreme Court of the United States will ordinarily not grant Certiorari.

In its Opinion, the Court of Appeals makes it very clear that it found the Master's recommendations as to Darrow's surcharge clearly erroneous. However its decision was not a reversal of any Findings of Fact by the Master or the District Court, but was a reversal of the conclusions of law of the Master, concurred in by the District Court.

Petitioners' Unsound Contention That Darrow Violated His Fiduciary Duty and Should Be Surcharged.

Pages 16 to 24 of Petitioners' Brief are devoted to the contention that Darrow violated his fiduciary duty and should be surcharged. In support of that contention, Petitioners cite seventeen cases. Most of these cases are merely cited as authorities for abstract rules of law with respect to the duties of fiduciaries. The following cases are cited

in that manner, without any discussion whatever of the facts:

Fleishhacker v. Blum, 109 F. (2d) 543 (C. C. A. 9, 1940).

Michoud v. Girod, 45 U. S. 503 (1846).

Jackson v. Smith, 254 U. S. 586 (1921).

Ex Parte Belchier, 1 Amb. 218 (27 Eng. Reprint 144).

Speight v. Gaunt, 22 Ch. 727.

Evans v. Williams, 276 Fed. 650.

In re Marcus, 2 Fed. Sup. 524.

Taylor v. Standard Gas & Electric Co., 306 U. S. 307.

Pepper v. Litton, 308 U. S. 295.

American United Mutual Life Ins. So. v. Avon Park, 311 U. S. 138.

Woods v. City National Bank & Trust Co., 312 U. S. 262.

Manufacturers Trust Company v. Becker, 338 U. S. 304.

Meinhard v. Salmon, 249 N. Y. 458.

We do not propose to expand this Brief by a discussion of the facts in each of these cases. We do say to the Court, however, that an examination of the facts will show that they are clearly distinguishable from the *Darrow* case and have little application to it.

Petitioners' Brief (p. 19) quotes at length from Scott, *The Law of Trusts*; and (pp. 19-20) from "*Restatement of the Law of Trusts*". The general statements of law quoted from these authorities are likewise not applicable here because they are not predicated upon facts such as those presented by the record in this case.

We will comment specifically upon two cases cited and discussed by Petitioners.

Petitioners quote at length (p. 18) from *Trice v. Comstock*, 120 Fed. 620. That case, when its facts are studied, will be found to have no pertinency to the *Darrow* case whatever. In that case the Court held a partner in a real estate transaction liable as Trustee *ex maleficio* because of his wrongful conduct in connection with such transaction. It is obvious, therefore, that it has no application to a case in which a surcharge is sought to be imposed upon a Bankruptcy Trustee on the facts presented by the record in the case at bar.

Petitioners also cite and quote from *Magruder v. Drury*, 235 U. S. 106, in an attempt to avoid the effect of the finding by the Court of Appeals that these two Bankruptcy Estates here, had profited substantially from the activities of Darrow's employees, because of which Darrow was surcharged by the District Court. In so doing, the Petitioners' Brief quotes from that case only the language that "it makes no difference that the Estate was not the loser in the transaction".

It is with some reluctance that we point out that this "lifted" quotation gives a totally wrong impression of the holding of the Court in the *Magruder v. Drury* case. There the main question presented was whether certain "commissions" which the Trustee had received on securities purchased from his own real estate firm constituted illegal profits which he must return to the Estate he was administering. Drury, the Trustee, was a member of a firm of real estate brokers from which the securities in question were purchased for the Estate, and he charged the Estate the "commissions" in question on those sales. In the holding that Drury, as Trustee, was personally liable for such "commissions", this Court said:

"It is well settled that a Trustee can make no profits out of his Trust. * * *

It makes no difference that the Estate was not a loser in the transaction or that the commissions were

no more than the services were reasonably worth. It is the relation of the Trustee to the Estate which prevents his dealing in such a way as to make a personal profit for himself."

When the totally different facts in the *Magruder v. Drury* case are considered, and particularly when the full statement from the Court's opinion is read without "lifting", it will be seen that the case in no way supports Petitioners' contentions in the case at Bar.

Conclusion.

We respectfully urge this Court to dismiss or deny the Petition for Certiorari for the following reasons:

1. Neither of the Petitioners here are lawful "parties" entitled to invoke the jurisdiction of this Court in this proceeding.
2. Because of the lack of lawful parties, this Court has no jurisdiction to consider the Petition.
3. The Petition is actually being prosecuted by the Securities and Exchange Commission, which by statute is forbidden to prosecute Appeals or Petitions for Review in Bankruptcy cases.
4. On the facts and the law applicable thereto, the decision of the United States Court of Appeals is sound and should stand.

Respectfully submitted,

URBAN A. LAVERY,
33 South Clark Street,
Chicago, Illinois,

IRVING HERRIOTT,
120 South LaSalle Street,
Chicago, Illinois,

Attorneys for Paul E. Darrow.

APPENDIX.

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APPENDIX A.*

ORDER NO. 1.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION.

In the Matter of
NATIONAL REALTY TRUST
A Common Law Trust,

Debtor.

In proceedings for
reorganization.
No. 58335

ORDER APPOINTING ADDITIONAL TRUSTEE

This matter coming on to be heard upon the report of Martin Ward, Referee in Bankruptcy as Special Master, filed herein October 27, 1949, concerning the status of the proceedings and the matter of appointing an additional trustee;

And it appearing to the court that an order has been previously entered herein approving the petition as having been properly filed under Section 77B of the Acts of Congress relating to Bankruptcy; and that Paul E. Darrow, subsequent thereto, was appointed trustee of the debtor herein, and that thereafter Paul E. Darrow resigned in August of 1943, and Stacy C. Mosser was appointed successor trustee and is now acting in said capacity;

And the court being fully advised in the premises,

FINDS:

That the amount of property of the subsidiaries of the debtor is large and many complex administrative questions are involved, and that it would be for the best interests of this estate and its creditors if an additional trustee was appointed.

IT IS THEREFORE ORDERED AND DECREED that Frank Whiston is appointed as an additional trustee of the debtor and its property.

The additional trustee shall, within five days, enter into a bond to the United States in the sum of Twenty-Five Thousand Dollars, with sureties to be approved by the court, conditioned for the faithful performance of his official duties.

The trustees shall:

1. take into their possession and control all of the property, assets and business of the debtor, wherever located;
2. prepare and file, within 30 days hereof, a full and complete inventory of the debtor's estate;
3. keep, in accordance with good accounting practices, regular accounts showing all amounts received and from what source and all amounts expended and on what accounts;
4. file with the court a report in writing as to the condition of the estate and the amount of money on hand within the first month hereafter, and every month thereafter;

* The originals of the Certified Copies of the following five Court Orders have been filed with the Clerk of this Court, in this case.

5. account for and pay over all interest, commissions and moneys received upon the property of the estate;

6. continue to investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business, and the desirability of the continuance thereof, and report thereon to the judge with all convenient speed, and to that end may examine the directors and officers of said debtor, and any other witnesses, concerning said matters or any of them;

7. report to the judge any facts ascertained pertaining to fraud, misconduct, mismanagement, and irregularities and to any causes of action available to the estate.

The trustees shall have the power:

1. to operate the business and manage the property of the said debtor until the further order of the court, including therein, but not limiting, the generality of the foregoing power and powers:

a. to do all things necessary or convenient in the operation and conduct of said business and in the maintenance and preservation of said estate;

b. to preserve, maintain and keep the property of the debtor in good condition and repair;

c. to buy and sell, either for cash or credit, such merchandise, supplies, furniture, equipment, or other property as may be necessary or advisable in the administration, preservation, maintenance, and conduct of the debtor's business;

d. to perform or cancel existing contracts of the debtors;

e. to employ, discharge, and to pay compensation, salaries, and wages of agents, servants and employees, who may be officers of the debtor, as they deem necessary or advisable in connection with the administration, preservation, maintenance, and operation of the property, assets, and business of the debtor;

f. to pay the salaries and wages of agents, employees, laborers, and servants of the debtor, accrued or to accrue, so far as the trustees may deem it necessary or expedient to avoid detriment to the working organization of said business;

g. to pay all taxes due, or to become due, on debtor's property, as well as all state franchise and sales taxes and all federal taxes or other impositions necessary by state or federal law;

h. to institute, prosecute, and maintain suits or proceedings at law, in equity, or under statute, in any court of competent jurisdiction, for the recovery, protection, or maintenance of the property, assets, and business of the debtor or of the trustees; and

i. to continue to defend any pending actions or suits in which the debtor or the trustees may have any interest as plaintiff, defendant, or otherwise.

The additional trustee, Frank Whiston, is hereby authorized and directed to exercise full voting rights of any and all stock owned by the debtor of the following corporations:

APPENDIX.

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Armour Station Building Corporation,
Berwyn Post Office Building Corporation,
Division and LaVergne Building Corporation,
Grand Rapids Parcel Post Building Corporation,
LaGrange Post Office Building Corporation,
Ogden Park Post Office Building Corporation,
Park View Manor Building Corporation,
Postal Facilities, Inc., a corporation, 6929 North Clark
Street Building Corporation, 6748 Crandon Avenue Build-
ing Corporation, and Windsor Shore Building Corpora-
tion.

The court reserves full right and jurisdiction to make, from time-to-time, such orders amplifying, extending, limiting, or otherwise modifying this order as to the court may seem proper.

ENTER:

Judge Campbell

Dated: November 7, 1949.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Eastern Division**

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of an order appointing additional Trustee made and entered in said Court on the 7th day of November, A. D. 1949 as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 2nd day of January, A. D. 1951.

Roy H. Johnson

Clerk.

[SEAL]

By E. B. Davis,

Deputy Clerk.

ORDER NO. 2

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In the matter of
FEDERAL FACILITIES REALTY TRUST,
a common law trust,

Debtor

In proceedings for
reorganization
No. 58334.

ORDER APPOINTING ADDITIONAL TRUSTEE

This matter coming on to be heard upon the report of Martin Ward, Referee in Bankruptcy as Special Master, filed herein October 27, 1949, concerning the status of the proceedings and the matter of appointing an additional trustee;

And it appearing to the court that an order has been previously entered herein approving the petition as having been properly filed under Section 77B of the Acts of Congress relating to Bankruptcy; and that Paul E. Darrow, subsequent thereto, was appointed trustee of the debtor herein, and that thereafter Paul E. Darrow resigned in August of 1943, and Stacy C. Mosser was appointed successor trustee, and is now acting in said capacity;

And the court being fully advised in the premises,

FINDS:

That the amount of property of the subsidiaries of the debtor is large and many complex administrative questions are involved, and that it would be for the best interests of this estate and its creditors if an additional trustee was appointed.

IT IS THEREFORE ORDERED AND DECREED that Joseph Schwartz is appointed as an additional trustee of the debtor and its property.

The additional trustee shall, within five days, enter into a bond to the United States in the sum of Twenty-Five Thousand Dollars, with sureties to be approved by the court, conditioned for the faithful performance of his official duties.

The trustees shall:

1. take into their possession and control all of the property, assets and business of the debtor, wherever located;
2. prepare and file, within 30 days hereof, a full and complete inventory of the debtor's estate;
3. keep, in accordance with good accounting practices, regular accounts showing all amounts received and from what source and all amounts expended and on what accounts;
4. file with the court a report in writing as to the condition of the estate and the amount of money on hand within the first month hereafter, and every month thereafter;
5. account for and pay over all interest, commissions and moneys received upon the property of the estate;
6. continue to investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business, and the desirability of the continuance thereof, and report thereon to the judge with all convenient speed, and to that end may examine the directors and officers of said debtor, and any other witnesses, concerning said matters, or any of them;
7. report to the judge any facts ascertained pertaining to fraud, misconduct, mismanagement, and irregularities and to any causes of action available to the estate.

The trustees shall have the power:

1. to operate the business and manage the property of the said debtor until the further order of the court, including therein, but not limiting, the generality of the foregoing power and powers:

APPENDIX.

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a. to do all things necessary or convenient in the operation and conduct of said business and in the maintenance and preservation of said estate;

b. to preserve, maintain and keep the property of the debtor in good condition and repair;

c. to buy and sell, either for cash or credit, such merchandise, supplies, furniture, equipment, or other property as may be necessary or advisable in the administration, preservation, maintenance and conduct of the debtor's business;

d. to perform or cancel existing contracts of the debtor;

e. to employ, discharge, and to pay compensation, salaries, and wages of agents, servants and employees, who may be officers of the debtor, as they deem necessary or advisable in connection with the administration, preservation, maintenance, and operation of the property, assets, and business of the debtor;

f. to pay the salaries and wages of agents, employees, laborers, and servants of the debtor, accrued or to accrue, so far as the trustees may deem it necessary or expedient to avoid detriment to the working organization of said business;

g. to pay all taxes due, or to become due, on debtor's property, as well as all state franchise and sales taxes and all federal taxes or other impositions necessary by state or federal law;

h. to institute, prosecute, and maintain suits or proceedings at law, in equity, or under statute, in any court of competent jurisdiction, for the recovery, protection, or maintenance of the property, assets, and business of the debtor or of the trustees; and

i. to continue to defend any pending actions or suits in which the debtor or the trustees may have any interest as plaintiff, defendant, or otherwise.

The additional trustee, Joseph Schwartz, is hereby authorized and directed to exercise full voting rights of any and all stock owned by the debtor of the following corporations:

Chicago Post Office Service Building Corporation,
Columbus Parcel Post Building, Inc.,
Station "D" Post Office Building Corporation,
Dallas Parcel Post Station, Inc.,
Ferry Station Post Office, Inc.,
Irving Park Post Office Building Corporation,
McKinley Park Station Building Corporation,
North Halsted Post Office Building Corporation,
Quincy Station Post Office Building Corporation,
Roseland Building Corporation,
United States Building Corporation,
South Side Post Office Service Building Corporation,
Twenty-Second Street Station Building Corporation, and
Villa Building Corporation.

The court reserves full right and jurisdiction to make, from time-to-time, such orders amplifying, extending, limiting, or otherwise modifying this order as to the court may seem proper.

ENTER:

Judge Campbell

Dated: November 7, 1949.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Eastern Division**

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of an order appointing additional Trustee made and entered in said Court on the 7th day of November, A. D. 1949 as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 2nd day of January, A. D. 1951.

Roy H. Johnson,

Clerk

By E. B. Davis,

Deputy Clerk.

[SEAL]

**ORDER NO. 3
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In the Matter of
NATIONAL REALTY TRUST,
a common law trust,

} In proceedings for
the reorganization
of a corporation
Debtor } No. 58335

ORDER

This cause coming on to be heard upon the verified petition of Frank M. Whiston and Stacy C. Mosser, successor trustees of the debtor herein, and upon due notice to all attorneys of record, the court being fully advised in the premises, FINDS as follows:

That Frank M. Whiston and Stacy C. Mosser are the duly qualified and acting successor trustees of the debtor herein, and that on July 3, 1950, Stacy C. Mosser tendered to this court his resignation as trustee of this debtor,

IT IS THEREFORE ORDERED BY THE COURT:

(a) That the resignation of Stacy C. Mosser as one of the trustees of this debtor filed herein on July 3, 1950, be, and the same is hereby, accepted;

(b) That Frank M. Whiston and Stacy C. Mosser are hereby directed to file their first and final joint account and report covering the period from December 1, 1949, to and including July 3, 1950, on or before December 1, 1950;

(c) That all banks in which funds of the debtor are deposited are hereby directed to accept certified copies of this order as their authority for honoring checks signed by Frank M. Whiston and

APPENDIX.

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Stacy C. Mosser, as trustees of this debtor, subsequent to July 3, 1950, and prior to the date of this order, and as their authority for honoring checks subsequent to the date of this order signed only by Frank M. Whiston, successor trustee of this debtor, until the further order of this court.

ENTER:

Judge Campbell

October 17, 1950.

Examined and recommended,

October 16, 1950.

Martin Ward,

Referee in Bankruptcy as
Special Master

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Eastern Division

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of an order made and entered in said Court on the 17th day of October, A. D. 1950 as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 2nd day of January, A. D. 1951.

Roy H. Johnson,

Clerk

By E. B. Davis,

Deputy Clerk.

[SEAL]

ORDER NO. 4.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of
FEDERAL FACILITIES REALTY TRUST,
a common law trust,

Debtor

In proceedings for
the reorganization
of a corporation
No. 58334
No. 58335

ORDER

This cause coming on to be heard upon the verified petition of Frank M. Whiston, successor trustee of National Realty Trust, and Joseph Schwartz and Stacy C. Mosser, successor trustees of Federal Facilities Realty Trust, and upon due notice to all attorneys of record, the court being fully advised in the premises, FINDS as follows:

1. That Paul E. Darrow, former trustee of National Realty Trust and Federal Facilities Realty Trust, appealed to the United States Court of Appeals from an order of this court entered April

12, 1949, which order surcharged Mr. Darrow with \$43,447.46, being the profits made by two of the employees of said former trustee from their dealings in the securities of these two debtors and the subsidiary corporations of each.

2. That on August 14, 1950, the United States Court of Appeals rendered its decision reversing the order of the District Court insofar as it surcharged Paul E. Darrow for said profits made by his employees, and petition for rehearing was denied by the United States Court of Appeals on September 21, 1950.

3. That the trustees of these debtors desire to appeal the decision of the United States Court of Appeals to the Supreme Court of the United States, and believe that it will be for the best interests of these trust estates to seek a reversal of the decision of the United States Court of Appeals.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Frank M. Whiston, as successor trustee of National Realty Trust, and Joseph Schwartz and Stacy C. Mosser, successor trustees of Federal Facilities Realty Trust, be and they are hereby, authorized to file a petition for certiorari in the Supreme Court of the United States praying an appeal from the decision of the United States Court of Appeals entered August 14, 1950, and to prosecute such appeal, if allowed, and to pay any and all costs and expenses necessarily incurred in connection with such petition and appeal, all such costs and expenses to be equally divided between National Realty Trust and Federal Facilities Realty Trust.

ENTER:

Judge Campbell

October 26, 1950

Examined and recommended,

October 25, 1950.

Martin Ward

Referee, as Special Master

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Eastern Division

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of an order made and entered in said Court on the 26th day of October, A. D. 1950 as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 2nd day of January, A. D. 1951.

Roy H. Johnson,

Clerk.

By E. B. Davis,

Deputy Clerk.

[SEAL]

ORDER NO. 5
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of FEDERAL FACILITIES REALTY TRUST, a common law trust,	}	In proceedings for the reorganization of a corporation No. 58334
	Debtor	

ORDER

This cause coming on to be heard on the resignation of Stacy C. Mosser as one of the co-trustees of this debtor,

IT IS HEREBY ORDERED:

1. That the resignation of Stacy C. Mosser as one of the co-trustees of this debtor be, and the same is hereby, accepted, to become effective December 1, 1950.

2. That Joseph Schwartz and Stacy C. Mosser are hereby directed to file their first and final joint account and report covering the period from December 1, 1949 to and including November 30, 1950 on or before December 15, 1950.

3. That all bank accounts of the debtor and safety deposit boxes shall be transferred to the name of Joseph Schwartz as sole trustee of this debtor; and all banks and safety deposit vault companies are hereby directed to accept certified copies of this order as their authority for honoring checks or other documents signed solely by Joseph Schwartz as trustee on and after December 1, 1950, and until further order of this court.

ENTER:

November 29th, 1950.

Judge Campbell

Examined and recommended,

November 24th, 1950.

Martin Ward

Referee in Bankruptcy, as
 Special Master.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Eastern Division

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of an order made and entered in said Court on the 29th day of November, A. D. 1950, as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 2nd day of January, A. D. 1951.

Roy H. Johnson,

Clerk.

By E. B. Davis,

Deputy Clerk.

[SEAL]

APPENDIX.

APPENDIX B.

TRANSCRIPT OF PROCEEDINGS.*
 IN THE UNITED STATES DISTRICT COURT,
 NORTHERN DISTRICT OF ILLINOIS,
 EASTERN DIVISION.

In the Matter of
 FEDERAL FACILITIES REALTY TRUST,
 and
 NATIONAL REALTY TRUST. } No. 58 C 334
 No. 58 C 335

Proceedings had on the hearing of the above-entitled cause before the Honorable William J. Campbell, one of the judges of said court, in his courtroom, U. S. Court House, Chicago, Illinois, on October 26, 1950, at 10 'clock A. M.

Present:

Mr. J. Edgar Kelly, and
 Mr. Stanley A. Kaplan, appeared on behalf of the Trustees;
 Mr. Edward P. McGuire, appeared on behalf of SEC;
 Mr. Irving B. Campbell, appeared on behalf of 2 security holders.

The Clerk: No. 58 C 334, In the Matter of Federal Facilities Realty Trust, and No. 58 C 335, In the Matter of National Realty Trust, Petition by the trustees for a writ of certiorari in the Supreme Court of the United States.

Mr. Kelly: If the court please, this is the motion of the trustees of Federal Facilities Realty Trust and National Realty Trust for leave to file a petition for a writ of certiorari in the United States Supreme Court requesting an appeal from the decision of the Court of Appeals involving the former trustee's, Mr. Darrow's, accounts and reports.

We feel that the decision of the Court of Appeals is erroneous and the amount in excess of \$44,000 that is involved we wish to recover for this estate. We believe that the expenditure of the money necessary to perfect this appeal if it is granted will be justified.

The Court: How much do you think will be necessary?

Mr. Kelly: For the expenditure itself?

The Court: Ycs.

Mr. Kelly: In costs?

The Court: Yes.

Mr. Kelly: As close as we can estimate without having actual figures from the printer, I believe attorneys' fees and all will be less than a thousand dollars.

The Court: The attorney fees also. Do I understand that the Securities & Exchange Commission will join in this thing?

Mr. McGuire: Yes, your Honor. We will file a supporting brief.

* The complete original Certified Copy of this Transcript of Proceedings has been filed with the Clerk of this Court, in this case.

The Court: You will file your brief incident to the trustees' brief?

Mr. McGuire: Yes.

The Court: I do not see how you can get by with a thousand dollars including attorneys' fees.

Mr. Kelly: That may be a slight misstatement, your Honor. I am figuring on the cost of binding the record.

The Court: What estimate have you from the printer?

Mr. Kelly: I have not been able to get an estimate from the printer because it is a binding job. The record is all printed. He merely has to recover and bind that record, the briefs and the opinion. There is no printing so far as the record is concerned. The petition of certiorari will probably run maybe 20 pages and just an item of about \$75.00.

The Court: Who from Washington is going to argue the case for certiorari? The SEC will have its solicitor?

Mr. McGuire: The SEC will have its solicitor there.

The Court: If the SEC is willing to undertake the laboring oar here I would be willing to approve the matter of the appeal. The only point that presents itself to me here is a different one than, of course, is presented to the SEC, Mr. McGuire. I am concerned now and must be conscientiously with the preservation of the assets of this estate. You are concerned with the state of the law in this circuit and should properly be so concerned. I am too in a general way, but in this case my duties are to this particular estate. Now to burden this estate with a tremendous cost in order to rectify the law of the circuit, if indeed it needs rectification—I do not for the record say that it does—but who am I to disagree with my better? At the same time that apparently is the opinion of your Commission?

Mr. McGuire: That is right.

The Court: Or you would not be joining in this appeal.

Is it fair to the creditors of this estate for me to undertake so large a burden? I would be persuaded in granting this petition if I knew that the major portion of the work of the appeal, the legal work, the major portion of the legal work would be undertaken by the SEC and maybe the trustees had to file only more or less pro forma in order to comply with perfecting their certiorari.

What do you have to say on that?

Mr. McGuire: We are prepared to go all the way on this, your Honor, and be as diligent as we possibly can. As I say we will file a supporting brief and assume at least a portion and argue this matter.

There is really more at issue here than the \$40,000 that has been mentioned to you. There are matters in your decree which may have a bearing on this.

The Court: On the entire estate?

Mr. McGuire: Yes.

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Office-Supreme Court, U. S.

FILED

JAN 24 1951

CHARLES ELMORE GOSLEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1950.

No. 461

IN THE MATTER OF

**FEDERAL FACILITIES REALTY TRUST, A COMMON
LAW TRUST, AND NATIONAL REALTY TRUST, A
COMMON LAW TRUST,**

Debtors.

**STACY C. MOSSER, SUCCESSOR TRUSTEE OF NATIONAL
REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST AND
JOHN W. GUILD, INDENTURE TRUSTEE, ETC.,**

Petitioners,

vs.

**PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY
TRUST AND FEDERAL FACILITIES REALTY TRUST,**

Respondent.

**REPLY OF PETITIONER JOHN W. GUILD, AS SUC-
CESSOR INDENTURE TRUSTEE, TO THE BRIEF
OF PAUL E. DARROW, FORMER TRUSTEE OF
DEBTORS.**

JACOB B. COURSHON,

**231 South La Salle Street,
Chicago 4, Illinois,**

*Attorney for Petitioner John
W. Guild, Indenture Trustee.*



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IN THE
Supreme Court of the United States

OCTOBER TERM, 1950.

No. 461.

IN THE MATTER OF

**FEDERAL FACILITIES REALTY TRUST, A COMMON
LAW TRUST, AND NATIONAL REALTY TRUST, A
COMMON LAW TRUST,**

Debtors.

**STACY C. MOSSER, SUCCESSOR TRUSTEE OF NATIONAL
REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST AND
JOHN W. GUILD, INDENTURE TRUSTEE, ETC.,**

Petitioners,

vs.

**PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY
TRUST AND FEDERAL FACILITIES REALTY TRUST,**

Respondent.

**REPLY OF PETITIONER JOHN W. GUILD, AS SUC-
CESSOR INDENTURE TRUSTEE, TO THE BRIEF
OF PAUL E. DARROW, FORMER TRUSTEE OF
DEBTORS.**

STATEMENT OF FACTS.

Point II of Respondent Darrow's brief is an attack upon the status of this Petitioner, and he desires to file a sepa-

rate reply thereto. This Petitioner has examined the motion for substitution of Messrs. Schwartz and Whiston, as Successor Trustees of the Debtor's Estates, and begs leave to join in their motion for substitution. This Petitioner has also examined the reply brief of his co-petitioners to the brief of Respondent Darrow, and in the interests of brevity, and to conserve the time of this court, adopts said reply brief and begs leave to join therein.

The "Summary Statement of the Matter Involved" contained in the Petition for Certiorari is an accurate statement of the essential matters involved herein and need not be repeated. Said Statement is in no wise slanted to suit the contention of the Petitioners, nor is there any omission in reference to any important or significant facts as alleged by the Respondent. However, certain additional facts relevant to the status of the Indenture Trustee should now be properly brought to the attention of this court.

The Respondent contends that Petitioner Guild, Indenture Trustee, is without authority or standing to present a petition for certiorari in that he is not a "party" within the provisions of the United States Code concerning petitions for certiorari in this court. After default on the Federal Facilities bonds outstanding under the trust indenture, it became the duty of Guild, as Indenture Trustee, to actively represent the bondholders. The Indenture Trustee was a party to the reorganization proceedings of the Debtor, Federal Facilities Realty Trust, from the inception of said proceedings. He was the pledgee, as trustee, of all of the capital stock of all of the fourteen subsidiary corporations of Federal and participated actively in the reorganization of all of said subsidiaries. He filed a claim on behalf of the bondholders secured by his trust indenture. Upon the filing of Respondent Darrow's final accounts in National and Federal, said causes were consolidated for the purpose of hearing of objections filed to said

accounts and the Indenture Trustee filed objections and actively participated in the hearing on said objections. (Record 505, 510.) As a result of the evidence presented at said hearings, the surcharge, now before this court, was imposed. In Respondent's appeal to the Circuit Court of Appeals, the Respondent named the Indenture Trustee as an appellee (Record 1, 585 and 587), and he participated in said appeal as an appellee and cross appellant. (Record 594.) The cross appeal was not passed upon by the Circuit Court of Appeals because the matters involved therein were reserved by the District Court for further consideration. (Record 675 at page 691.) The case of Federal Facilities Trust and the case of National Realty Trust were heard as a consolidated case by the Court of Appeals and is now being brought to this court as a consolidated case, to which the Indenture Trustee is a proper party before this court. There is no statement or expression in the opinion of the Circuit Court of Appeals which would in any manner indicate that it was of the opinion that the Indenture Trustee was not a proper party.

ARGUMENT.

Rule 48 of the Supreme Court of the United States, dealing with joint or several appeals or petitions for Writs of Certiorari, expressly provides:

"Parties interested jointly, severally, or otherwise, in a judgment may join in an appeal or a petition for Writs of Certiorari therefrom; or, without Summons and severance, any one or more of them may appeal or petition separately, or any two or more of them may join in an appeal or petition."

Section 206 of Chapter X of the Bankruptcy Act (11 U. S. C. A., Sec. 606) provides as follows:

"The Debtor, the Indenture Trustees, and any creditors or stockholder of the Debtor shall have the right to be heard on all matters arising in a proceedings under this Chapter."

Had it been intended by the Act or any provision of the United States Code that the creditors of a Debtor were to be represented and protected solely by the Bankruptcy Trustee then it is quite evident that Indenture Trustees would not have been specifically named and included in Section 206.

Section 206 of the Bankruptcy Act has been held to give the parties designated therein absolute right to be heard on all matters arising in the proceedings, and this right includes and carries with it the right to appeal. *Keystone Realty Holding Co.*, 117 Fed. 2nd, 1003; *Dana, et al. v. Securities and Exchange Commission, et al.*, 125 Fed. 2nd, 547; *Young v. Higbee*, 324 U. S. 204, 210-213.

Furthermore, it seems strange and improper for Respondent to assert in his brief first that the Bankruptcy Trustee is not a proper party to file a petition for Cer-

tiorari, and then, in the same document, to assert that the Indenture Trustee is not a proper party because he and his indenture beneficiaries are represented by the Bankruptcy Trustee. Such a contradictory argument suggests that the Respondent is attempting, by specious argument, to prevent anyone from presenting the merits of the matter to this court.

Failure to sustain the surcharge against Respondent will diminish the trust assets to which the bondholders must look for payment. The Indenture Trustee, therefore, has a vital and important interest in these proceedings. This fact coupled with right given to him under Section 206 and the law giving those parties a right to be heard and a further right to appeal clearly gives the Indenture Trustee the right to maintain his petition in this court.

Conclusion.

Upon the Record in this case, the cases herein cited, the Section of the Bankruptcy Act herein cited, and Rule 48 of the Supreme Court of the United States, it is quite evident that Petitioner, as Indenture Trustee, had the right to be heard in the District Court, had the right to appeal from the order of the District Court which, in the opinion of this Petitioner, adversely affected the rights of the beneficiaries of his Trust, and is rightfully a proper party to file a Petition for the issuance of a Writ of Certiorari.

Petitioner respectfully submits that the Petition for Writ of Certiorari is proper and brought by proper parties; and that the Writ of Certiorari should issue.

Respectfully submitted,

JACOB B. COURSHON,

*Counsel for Petitioner, John W. Guild,
Successor Indenture Trustee.*

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1950.

No. 461

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IN THE MATTER OF
**FEDERAL FACILITIES REALTY TRUST, A COMMON
LAW TRUST, AND NATIONAL REALTY TRUST, A
COMMON LAW TRUST,**
Debtors.

**STACY C. MOSSER, SUCCESSOR TRUSTEE OF NATIONAL
REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST,
AND JOHN W. GUILD, INDENTURE TRUSTEE, ETC.**
Petitioners,

vs.

**PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY
TRUST AND FEDERAL FACILITIES REALTY TRUST,**
Respondent.

**MOTION TO SUBSTITUTE PRESENT TRUSTEES FOR
PREDECESSOR TRUSTEES AS PETITIONERS
AND
REPLY BRIEF OF PETITIONERS.**

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IN THE
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OCTOBER TERM, 1950.

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IN THE MATTER OF

**FEDERAL FACILITIES REALTY TRUST, A COMMON
LAW TRUST, AND NATIONAL REALTY TRUST, A
COMMON LAW TRUST,**

Debtors.

**STACY C. MOSSER, SUCCESSOR TRUSTEE OF NATIONAL
REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST,
AND JOHN W. GUILD, INDENTURE TRUSTEE, ETC.**

Petitioners,

vs.

**PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY
TRUST AND FEDERAL FACILITIES REALTY TRUST,**

Respondent.

**MOTION TO SUBSTITUTE PRESENT TRUSTEES FOR
PREDECESSOR TRUSTEES.**

*To the Honorable Justices of the Supreme Court of the
United States:*

Now come Frank M. Whiston, successor trustee of National Realty Trust, and Joseph Schwartz, successor trustee of Federal Facilities Realty Trust, and move that they be

substituted in this cause for Stacy C. Mosser, as trustee of said trusts, for the following reasons:

1. On October 17, 1950, an order was entered in the District Court for the Northern District of Illinois, Eastern Division, in the proceedings there pending for the reorganization of National Realty Trust accepting the resignation of Stacy C. Mosser as successor trustee of said trust and appointing Frank M. Whiston as successor trustee of National Realty Trust, and the said Frank M. Whiston is now the duly qualified and acting trustee of National Realty Trust.*

2. On November 29, 1950, an order was entered in the District Court for the Northern District of Illinois, Eastern Division, in the proceedings there pending for the reorganization of Federal Facilities Realty Trust accepting the resignation of Stacy C. Mosser as successor trustee of said trust, effective December 1, 1950, and appointing Joseph Schwartz as successor trustee of Federal Facilities Realty Trust, and said Joseph Schwartz is now the duly qualified and acting trustee of Federal Facilities Realty Trust.*

3. Frank M. Whiston, successor trustee of National Realty Trust, and Joseph Schwartz, successor trustee of Federal Facilities Realty Trust, desire and hereby elect to adopt, carry on and continue the proceedings heretofore brought by Stacy C. Mosser as trustee of National Realty Trust and as trustee of Federal Facilities Realty Trust in this cause, for the purpose of preserving the estates of said trusts and recovering assets to which said trusts are entitled.

WHEREFORE, Frank M. Whiston, as trustee of National Realty Trust, prays that he may be substituted for Stacy C. Mosser, trustee of National Realty Trust, as peti-

* Certified copies of these and the other pertinent orders have been filed with the clerk in these proceedings and are set forth in Appendix to Petitioners' Reply Brief.

tioner in this cause, and Joseph Schwartz, as trustee of Federal Facilities Realty Trust, prays that he may be substituted for Stacy C. Mosser, trustee of Federal Facilities Realty Trust, as petitioner in this cause.

Respectfully submitted,

CARL W. MOLFINGER and
J. EDGAR KELLY,

*Counsel for Frank M. Whiston,
Petitioner.*

CARL W. MOLFINGER,
J. EDGAR KELLY and
STANLEY A. KAPLAN,

*Counsel for Joseph Schwartz,
Petitioner.*

CONSENT TO SUBSTITUTION BY PREDECESSOR TRUSTEE.

The undersigned hereby consents to the substitution of Frank M. Whiston, trustee of National Realty Trust, and Joseph Schwartz, trustee of Federal Facilities Realty Trust, in his stead as petitioners in this cause.

STACY C. MOSSER.

4

AFFIDAVIT.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

J. EDGAR KELLY, being first duly sworn, on oath deposes and says that:

1. He is a member of the bar of the highest court of the State of Illinois and of the Supreme Court of the United States.

2. He is a member of the law firm of Deming, Jarrett & Mulfinger, and together with Carl W. Mulfinger of said firm has been acting as counsel for the trustees of National Realty Trust and Federal Facilities Realty Trust since November 17, 1943.

3. Stacy C. Mosser was appointed as successor trustee of National Realty Trust and Federal Facilities Realty Trust on August 13, 1943, and the cause below from which petition for certiorari has been taken was instituted in the Circuit Court of Appeals on appeal taken by Darrow on the 12th day of April, 1949, while Stacy C. Mosser was sole trustee of both trusts.

4. On the 7th day of November, 1949, Frank M. Whiston was appointed co-trustee with Stacy C. Mosser of National Realty Trust and on the 17th day of October, 1950, Stacy C. Mosser resigned as co-trustee of National Realty Trust, leaving Frank M. Whiston as sole trustee.

5. On the 7th day of November, 1949, Joseph Schwartz was appointed co-trustee with Stacy C. Mosser of Federal Facilities Realty Trust and on the 1st day of December, 1950, Stacy C. Mosser's resignation as co-trustee of Federal Facilities Realty Trust became effective, leaving Joseph Schwartz as sole trustee.

6. The cause in the court below proceeded to conclusion in the name of Stacy C. Mosser as trustee of National

Realty Trust and Federal Facilities Realty Trust, and John W. Guild, successor indenture trustee, appellees.

7. On September 29, 1950 the Court of Appeals for the Seventh Circuit issued its mandate in this cause and on October 26, 1950 Frank M. Whiston, as successor trustee of National Realty Trust and Stacy C. Mosser and Joseph Schwartz as successor trustees of Federal Facilities Realty Trust procured the authority of the District Court to seek certiorari from the decision of the Court of Appeals.

8. On October 31, 1950 Stacy C. Mosser, as trustee of the two trusts, and the only trustee of record in the Court of Appeals, filed with the clerk of that court a designation of record, thereby initiating these proceedings for the issuance of a writ of certiorari. Pursuant to that designation of record the clerk of the Court of Appeals prepared and certified the record on November 8, 1950. On November 27, 1950 the record was forwarded to the clerk of this court and received by him prior to December 1, 1950, the date on which Mosser's resignation as trustee of Federal Facilities Realty Trust became effective.

9. Stacy C. Mosser being the only trustee named as a party petitioner in the record filed in this court, the petition for certiorari was prepared and filed in his name with his knowledge and consent and with the knowledge, consent and participation of Messrs. Schwartz and Whiston, with the expectation and intention of filing supplemental pleadings in the Supreme Court of the United States substituting the names of the successor trustees, Frank M. Whiston and Joseph Schwartz, as petitioners therein.

10. Affiant further states that Stacy C. Mosser has not been discharged as trustee in either of these trusts to date, his accounts are pending approval and his bonds have not been cancelled.

11. - This affidavit is made by the undersigned, as counsel above mentioned, in support of the motion to substitute

in this cause the names of Frank M. Whiston as trustee of National Realty Trust and Joseph Schwartz as trustee of Federal Facilities Realty Trust for the name of Stacy C. Mosser as trustee of said trusts.

J. EDGAR KELLY.

Subscribed and sworn to before me this 22nd day of January, A. D. 1951. /

EVA RAUSCHENBERGER,
Notary Public.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1950.

No. 461.

IN THE MATTER OF
**FEDERAL FACILITIES REALTY TRUST, A COMMON
 LAW TRUST, AND NATIONAL REALTY TRUST, A
 COMMON LAW TRUST,**

Debtors.

**STACY C. MOSSER, SUCCESSOR TRUSTEE OF NATIONAL
 REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST,
 AND JOHN W. GUILD, INDENTURE TRUSTEE, ETC.**

Petitioners.

vs.

**PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY
 TRUST AND FEDERAL FACILITIES REALTY TRUST,**

Respondent.

**BRIEF IN SUPPORT OF MOTION FOR SUBSTITU-
 TION OF PRESENT TRUSTEES FOR FORMER
 TRUSTEES IN THIS CAUSE AND IN REPLY TO
 BRIEF OF RESPONDENT DARROW.**

**Argument in Support of Motion to Substitute Present Trus-
 tees for Former Trustees and Reply to Point I of Re-
 spondent Darrow's Brief.**

I.

The cause in the court below was a consolidated case
 entitled "Stacy C. Mosser, Successor Trustee of National
 Realty Trust and Federal Facilities Realty Trust, and John

W. Guild, Indenture Trustee *vs.* Paul E. Darrow, Former Trustee of National Realty Trust and Federal Facilities Realty Trust". The case concluded under said title in the Court of Appeals for the Seventh Circuit when that court issued its mandate on September 29, 1950, while Stacy C. Mosser was trustee of both trusts. The facts on which the motion for the substitution of the names of the present trustees for their predecessor is based are set forth in the motion for substitution and in the affidavit in support thereof. The chronological statement of the pertinent facts set forth in the affidavit filed in support of the motion to substitute trustees (which in the interest of brevity is not repeated here) discloses that Mosser initiated this petition for certiorari when he was the only trustee who had been a party below and that the record had been certified to this court and the petition was in the process of preparation when he resigned as trustee of these trusts. It should be noted, moreover, that Mosser has not yet been discharged as trustee of said trust nor his bonds cancelled. His successors in office filed the petition in his name with the expectation and intention of filing supplemental pleadings to correct the record in this Court.

In fact, purpose, and effect, this petition for certiorari actually and in legal import is the petition of Federal Facilities Realty Trust and of National Realty Trust, and of their respective trustees. A proper motion requesting substitution is now being made, with due dispatch and within six months from the date of Mosser's resignation as trustee of the respective trusts.

The right of the present trustees of these trusts to carry on this litigation is specifically set forth in the following provision of the Bankruptcy Act, United States Code, Title 11, Chap. 5, Sec. 74, which provides:

"Death or Removal of Receivers or Trustees. The death or removal of a receiver or trustee shall not

abate any suit or proceedings which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint receiver or joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint receiver or joint trustee alone or by such successor."

This provision of the Bankruptcy Act makes it clear that the action does not abate. The successor trustees are now asking to be substituted as petitioners in this Court in order to give effect to their substantive right under the Bankruptcy Act by making such substitution in the only forum available to them for that purpose, the mandate of the Court of Appeals having issued prior to the resignation of the predecessor trustee.

Respondent Darrow in his brief asserts that the petition for certiorari in the name of the former trustee is improper and that the court is without jurisdiction. The cases cited by the respondent at page 9 of his brief all deal with appeals by persons who were not parties to the record below and who sought unsuccessfully to petition for certiorari. None of the cases so cited by the respondent are at all applicable to the instant situation.

The appointment of Messrs. Whiston and Schwartz as successor trustees to Mosser as trustee of National Realty Trust and Federal Facilities Realty Trust effects a transfer of title to assets of heir trusts, consisting of various property rights, including the pending cause of action. The situation is therefore analogous to a transfer of a cause of action *pendente lite* or an assignment of a contractual right. In such cases it was formerly held at common law that such litigation must necessarily be continued by the transferee in the name of the transferor and it still remains permissible practice. At most, the change of parties plaintiff in an action theretofore maintained in the name of the transferor rather than the transferee can

be readily rectified by substituting the transferee. See *Bragg v. Gerstel*, 148 F. (2) 757, 758, CCA 5th (1945); *Fox v. McGrath*, 152 F. (2d) 616, 618 C. A. 2d (1945); *Commercial Credit Co. v. County of Northumberland*, 23 F. Supp. 747 D.³ C. M. D. Pa. (1938); *Bowers v. American Surety Co.*, 30 F. (2) 244 C. C. A. 2d (1929); *Sumpter Lumber Co. v. Sound Timber Co.*, 257 Fed. 408 C. C. A. 9th (1919); *F. A. Mfg. Co., Inc. v. Hayden & Clemens, Inc.*, 273 Fed. 374 C. C. A. 1st (1921); 1 American Jurisprudence 49; Cyclopedia of Federal Procedure, 2d Ed., Vol. 6, p. 117.

A closely similar situation was involved in the case of *Adams v. Johnson*, 107 U. S. 251 (1883). Adams was appointed as receiver in place of Bowden, the original receiver and the original plaintiff. The appeal to the Supreme Court was taken in the name of Bowden. Adams moved in the Supreme Court to be substituted as plaintiff and appellant in place of Bowden, without prejudice to the proceedings theretofore had. Appellees moved to dismiss the appeal on the ground that no appeal was ever lawfully taken. The motion to dismiss was denied and the motion of Adams to be substituted was granted. The principle of the *Adams* case is applicable to this cause. The formal substitution of parties by changes in name can do no injury to the respondent in this case.

Another analogous case authorizing substitution of parties plaintiff in this Court is *Gates v. Goodloe*, 101 U. S. 612 (1880). Similarly, in the case of *Myers v. Canton National Bank, Canton, Illinois*, 109 F. (2) 31 (1940), a motion to dismiss by appellee was made in the Circuit Court of Appeals on the ground that the original pleadings in that court named the predecessor receiver who had been replaced by the present receiver. The appellee contended that the receiver was an indispensable party, and that since the receiver sued was the predecessor and not the present re-

ceiver the proceedings were fatally defective. The court stated that the new receiver could be substituted as a party.

In the present litigation, the real parties in interest are the trust estates which are being administered by the Federal Court. The estates themselves are, in reality, before this court, and the filing of the petition in the name of the predecessor trustee is a technicality of form which should not stand in the way of rendering substantive justice.

Furthermore, this substitution of present trustees for Mosser is permissible under the rules and procedures of this court, which are flexible enough to permit this correction in the name of the parties petitioners. Rule 19 (4) of the Revised Rules of the Supreme Court of the United States provides that where a public officer by or against whom a suit is brought dies or ceases to hold office while the suit is pending in a federal court, either of the first instance or appellate, a successor in office may be substituted on proper showing made within six months after the date of the death or separation from office.

Frank M. Whiston and Joseph Schwartz were appointed trustees pursuant to Chapter X of the Bankruptcy Act by the United States District Court authorized by Congress to make the appointment (11 U. S. C. A., Sec. 556). As such, they are not only officers of the District Court, but are public officers. By sections 186 and 187 of the Bankruptcy Act, (11 U. S. C. A., Secs. 586 and 587) the Chapter X trustee is vested with the same title, rights, duties, and powers as the bankruptcy trustee appointed under section 44 of the act (11 U. S. C. A., Sec. 72). Section 44 is part of Chapter V of the Bankruptcy Act which is entitled "Officers, Their Duties and Compensation", and Section 33 of said chapter creates the "offices of referee and trustee" (11 U. S. C. A., Sec. 61). Section 50 of the Bankruptcy Act (11 U. S. C. A., Sec. 78), requires that a trustee shall "qualify by furnishing a bond to the United States".

It has been held that a bankruptcy trustee is an "officer" of the United States court which appoints him. *Vass v. Conron Bros. Co.*, 59 F. (2d) 969; C. C. A. 2, (1932). See also *In re Morris White Holding Company*, 52 F. (2d) 499, 501, S. D. N. Y. (1931). This court has stated in the case of *Callaghan v. Reconstruction Finance Corporation*, 297 U. S. 464, 468 (1935), that trustees in bankruptcy are "public officers". The Court of Appeals for the Third Circuit in the case of *In re Prindible*, 115 F. (2d) 21 (1940), stated that trustees in bankruptcy, as well as referees are "public officers".

A receiver of a national bank appointed by the Controller of the Currency has been held to be an officer of the United States in numerous cases. See *Pufahl v. Est. of Parks*, 299 U. S. 217, 225 (1936); *U. S. v. Weitzel*, 246 U. S. 533, 541. The powers, duties, obligations, and responsibilities of a trustee appointed under Chapter X are broader and more extensive than the powers of a receiver of a national bank or a trustee in straight bankruptcy, and such a trustee under Chapter X is *a fortiori* a public officer and an officer of the United States.

Therefore, Frank M. Whiston and Joseph Schwartz, as trustees of these trusts are public officers entitled within the meaning of Rule 19 (4) to move their substitution as petitioners in this cause within six months from the dates of the resignations of their predecessor in office. The continuance of this cause of action by them is necessary and proper in order to protect and preserve their trust and in order to recover assets to which such estates are properly entitled. No new cause of action is being asserted nor are these petitioners seeking to change the liability sought to be enforced against the respondent Darrow.

The statement of the court in the case of *Fleming v.*

Goodwin, C. C. A. 8, 1948, 165 F. (2d) 334, at 338, cert. denied 334 U. S. 828, is pertinent in the instant situation. That case involved the right to substitute as party plaintiff a successor price administrator for his predecessor in office under Rule 25 (d) of the Rules of Civil Procedure which is analogous to Rule 19 (4) of this court. The Circuit Court of Appeals, in granting the right to substitute, stated:

"The action was, however, in substance and reality, at all times a controversy between the government and the appellees. The only purpose of substitution in such a case was to keep the records straight so that the judgment finally entered would unquestionably bind the right parties. Such a substitution we think amounts to not more than the formal amendment to the title of the action to conform it to the truth."

Similarly, in *United States v. Koike*, 164 F. (2d) 155, 157, C. C. A. 9th, (1947), the court indicated that a substitution of the United States for the price administrator was not really a matter of a new party because previous holders of the office were no more than nominal plaintiffs and the United States was the real petitioner. The court stated:

"* * * It is within the scope of this power to permit the substitution of a party for whose benefit an action was brought in place of the nominal plaintiff. This has been done both where the nominal plaintiff was found to lack authority to sue and where the statute of limitations would have barred the commencement of a new action by a real plaintiff. *McDonald v. Nebraska*, 8 Cir. 101 F. 171. *A fortiori* it may be done here, where the nominal plaintiff originally had authority to sue, but was later deprived of it."

Likewise, in *Porter v. Maule*, 160 Fed. (2d) 1 C. C. A. 5, (1947), defendants moved to dismiss Porter's appeal because at the time the notice of appeal was given in the name of Bowles (his predecessor in office) Porter not Bowles was the administrator and since Porter had not

given notice of appeal, there was no appeal. The court in sustaining the right to substitute parties plaintiff, stated at page 3:

"We think it plain both on reason and on authority the suit did not abate, but continued both for judgment and for appeal in the name of the nominal plaintiff until his successor was substituted."

Compare on the impropriety of an appeal by the United States instead of the predecessor in office, *U. S. v. Seigel*, 168 F. (2d) 143 C. A. D. C. (1948).

The present situation, as disclosed in the affidavit in support of motion filed herewith, is not like that which was involved in the case of *Snyder v. Buck*, 95 Law. Ed. 53, recently decided by this court, in which a suit against a former Paymaster General abated because substitution of the new defendant was not requested within the six months period specified in section 11 (a) of the Judiciary Act of 1925; nor is the situation here the same as that involved in the case of *Davis v. Preston*, 280 U. S. 406 (1930), in which, in a suit for damages against a Former Federal Agent, a motion for substitution was made in this court (after a writ of certiorari had been granted) almost four years after the defendant Davis had been succeeded in office by Mellon, such succession in office having occurred long before there was any effort to obtain a review in this court. This situation is also unlike that in the case of *Nudelman v. Globe Varnish Co.*, 312 U. S. 690 (1941), in which no motion to substitute was ever made.

In the instant case, the real parties in interest are the estates and the trustees involved are officers holding title to property in the custody of the federal court and in which they have no personal interest. These trustees are public officers seeking as parties plaintiff to bring into their estates assets to which such estates are entitled. The sub-

stitution, therefore, is a technical formality which should be allowed.

We, therefore, respectfully request that Frank M. Whiston, as successor trustee of National Realty Trust, and Joseph Schwartz, as successor trustee of Federal Facilities Realty Trust, be substituted for Stacy C. Mosser, the former trustee of National Realty Trust and Federal Facilities Realty Trust, as petitioners in this cause and further proceedings continued in their names.

II.

Reply to Point II of Respondent Darrow's Brief.

These petitioners contend that John Guild, as indenture trustee, is a proper petitioner in these proceedings under 28 U. S. C. A., Sec. 1254 and Sec. 206 of the Bankruptcy Act (28 U. S. C. A., Sec., 606), but will not reply at length to the assertion in respondent Darrow's brief that John W. Guild, as indenture trustee, is an improper party, since these petitioners are advised that Guild will file a separate reply brief in support of his own status as a proper party herein.

III.

Reply to Point III of Respondent Darrow's Brief.

With respect to the remarks of respondent Darrow concerning the Securities and Exchange Commission, Frank M. Whiston, as trustee of National Realty Trust, and Joseph Schwartz and Stacy C. Mosser, as trustees of Federal Facilities Realty Trust, sought and procured the leave of the District Judge who had appointed them to file and prosecute this petition for certiorari. This was done by these trustees because they believed then, and believe now, that it was their duty so to do in order to prosecute this litigation and to effect recovery on behalf of these estates.

IV.

Reply to Point IV of Respondent Darrow's Brief.

It is significant to note that the respondent Darrow's brief is directed primarily to technical questions of parties. Respondent's brief does not make a substantial effort to reply to the substantive questions raised by the petition for certiorari.

Respondent attempts to justify the decision of the Court of Appeals on the ground that a surcharge necessarily requires the existence of direct loss to the estate and cites *In re Miller's Estate*, 26 Atl. (2) 320. In that case the question involved was whether an executor should be surcharged for losses to the estate sustained by virtue of the failure of the executor to sell certain stocks promptly. The court there held that the loss resulted from an honest exercise of judgment and not from the lack of common prudence and refused to surcharge such an executor. The court there was not confronted with a situation such as is presented here, and its remarks cannot be strained to make them applicable to the present case.

A more pertinent decision on this point is *Magruder v. Drury*, 235 U. S. 106, which the respondent at length attempts to explain away. This court in the *Magruder* case held a trustee personally liable for commissions charged to his estate on sales made by him as a real estate broker for the estate. The court pointed out that the function of a surcharge in such a situation was to protect the estate by preventing a trustee from dealing with his estate, regardless of whether the estate suffers a loss.

A court of equity and of bankruptcy has sufficiently broad powers to impose a surcharge, as in the *Magruder* case, in order to protect the estate in the charge of the court against improper acts by persons owing a fiduciary duty

to that estate, and in order to restore to the estate property of which it was deprived as well as to compensate the estate for losses suffered by it.

These petitioners reassert that the general principles of law enunciated in Scott's Law of Trusts and in the Restatement of the Law of Trusts and quoted on pages 19 and 20 of petitioner's brief are directly applicable to the existent situation and support the surcharge imposed by the District Court. It is not a sufficient answer merely to state, as respondent does on page 18 of his brief, that these general principles of law quoted in petitioner's brief are not predicated on facts such as those presented by the record in this case. These quotations set forth the principles of common law which forbid a trustee from permitting his employees to take positions in conflict with their trust and to exercise their positions as fiduciaries to traffic in the securities of their trust in order to gain improper and illegal profits, and these basic principles of fiduciary responsibility must be reaffirmed in this case.

Respondent has reiterated throughout these proceedings the assertion that no case based on facts precisely the same as those here involved has been cited in support of the surcharge. It is much more significant that respondent can cite no case which countenances or condones conduct such as his or in any way gives justification for his actions.

The decision of the Court of Appeals in failing to sustain the surcharge imposed by the District Court will have a serious and extensive effect in lowering and tending to break down the high standards which are normally demanded of bankruptcy trustees and other fiduciaries.

Your petitioners respectfully assert that the petition for certiorari sets forth a cause which requires the action of this court to rectify the decision of the Court of Appeals.

Conclusion.

We respectfully urge this Honorable Court:

1. To grant the motion of respondents to substitute as petitioners in this cause Frank M. Whiston, as successor trustee of National Realty Trust, and Joseph Schwartz, as successor trustee of Federal Facilities Realty Trust, in place of Stacy C. Mosser, as trustee of said trusts.

2. To grant the petition for certiorari heretofore filed.

Respectfully submitted,

CARL W. MULFINGER,
J. EDGAR KELLY,

*Attorneys for Frank M. Whiston,
as successor trustee of National
Realty Trust,*

CARL W. MULFINGER,
J. EDGAR KELLY, and
STANLEY A. KAPLAN,

*Attorneys for Joseph Schwartz, as
successor trustee of Federal Fa-
cilities Realty Trust.*

APPENDIX

ORDER NO. 1.

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

<p>In the Matter of NATIONAL REALTY TRUST, a common law trust, Debtor.</p>	}	<p>In proceedings for reorganization. No. 58335.</p>
--	---	--

ORDER APPOINTING ADDITIONAL TRUSTEE.

This matter coming on to be heard upon the report of Martin Ward, Referee in Bankruptcy as Special Master, filed herein October 27, 1949, concerning the status of the proceedings and the matter of appointing an additional trustee;

And it appearing to the court that an order has been previously entered herein approving the petition as having been properly filed under Section 77B of the Acts of Congress relating to Bankruptcy; and that Paul E. Darrow, subsequent thereto, was appointed trustee of the debtor herein, and that thereafter Paul E. Darrow resigned in August of 1943, and Stacy C. Mosser was appointed successor trustee and is now acting in said capacity;

And the court being fully advised in the premises, FINDS:

That the amount of property of the subsidiaries of the debtor is large and many complex administrative questions are involved, and that it would be for the best interests of this estate and its creditors if an additional trustee was appointed.

IT IS THEREFORE ORDERED AND DECREED that Frank Whiston is appointed as an additional trustee of the debtor and its property.

The additional trustee shall, within five days, enter into a bond to the United States in the sum of Twenty-Five Thousand Dollars, with sureties to be approved by the court, conditioned for the faithful performance of his official duties.

The trustees shall:

1. take into their possession and control all of the property, assets and business of the debtor, wherever located;

2. prepare and file, within 30 days thereof, a full and complete inventory of the debtor's estate;

3. keep, in accordance with good accounting practices, regular accounts showing all amounts received and from what source and all amounts expended and on what accounts;

4. file with the court a report in writing as to the condition of the estate and the amount of money on hand within the first month hereafter, and every month thereafter;

5. account for and pay over all interest, commissions and moneys received upon the property of the estate;

6. continue to investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business, and the desirability of the continuance thereof, and report thereon to the judge with all convenient speed, and to that end may examine the directors and offi-

cers of said debtor, and any other witnesses, concerning said matters, or any of them;

7. report to the judge any facts ascertained pertaining to fraud, misconduct, mismanagement, and irregularities and to any causes of action available to the estate.

The trustees shall have the power:

1. to operate the business and manage the property of the said debtor until the further order of the court, including therein, but not limiting, the generality of the foregoing power and powers:

a. to do all things necessary or convenient in the operation and conduct of said business and in the maintenance and preservation of said estate;

b. to preserve, maintain and keep the property of the debtor in good condition and repair;

c. to buy and sell, either for cash or credit, such merchandise, supplies, furniture, equipment, or other property as may be necessary or advisable in the administration, preservation, maintenance, and conduct of the debtor's business;

d. to perform or cancel existing contracts of the debtor;

e. to employ, discharge, and to pay compensation, salaries, and wages of agents, servants and employees, who may be officers of the debtor, as they deem necessary or advisable in connection with the administration, preservation, maintenance, and operation of the property, assets, and business of the debtor;

f. to pay the salaries and wages of agents, employees, laborers, and servants of the debtor, accrued or to accrue, so far as the trustees may deem it necessary or expedient to avoid detriment to the working organization of said business;

g. to pay all taxes due, or to become due, on debtor's

property, as well as all state franchise and sales taxes and all federal taxes or other impositions necessary by state or federal law;

h. to institute, prosecute, and maintain suits or proceedings at law, in equity, or under statute, in any court of competent jurisdiction, for the recovery, protection, or maintenance of the property, assets, and business of the debtor or of the trustees; and

i. to continue to defend any pending actions or suits in which the debtor or the trustees may have any interest as plaintiff, defendant, or otherwise.

The additional trustee, Frank Whiston, is hereby authorized and directed to exercise full voting rights of any and all stock owned by the debtor of the following corporations:

Armour Station Building Corporation,
Berwyn Post Office Building Corporation,
Division and LaVergne Building Corporation,
Grand Rapids Parcel Post Building Corporation,
LaGrange Post Office Building Corporation,
Ogden Park Post Office Building Corporation,
Park View Manor Building Corporation,
Postal Facilities, Inc., a corporation,
6929 North Clark Street Building Corporation,
6748 Crandon Avenue Building Corporation, and
Windsor Shore Building Corporation.

The court reserves full right and jurisdiction to make, from time-to-time, such orders amplifying, extending, limiting, or otherwise modifying this order as to the court may seem proper.

ENTER:

JUDGE CAMPBELL.

Dated: November 7, 1949.

ORDER NO. 2.

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

<p>In the Matter of FEDERAL FACILITIES REALTY TRUST, a common law trust, Debtor.</p>	}	<p>In proceedings for reorganization. No. 58334.</p>
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ORDER APPOINTING ADDITIONAL TRUSTEE.

This matter coming on to be heard upon the report of Martin Ward, Referee in Bankruptcy as Special Master, filed herein October 27, 1949, concerning the status of the proceedings and the matter of appointing an additional trustee;

And it appearing to the court that an order has been previously entered herein approving the petition as having been properly filed under Section 77B of the Acts of Congress relating to Bankruptcy; and that Paul E. Darrow, subsequent thereto, was appointed trustee of the debtor herein, and that thereafter Paul E. Darrow resigned in August of 1943, and Stacy C. Mosser was appointed successor trustee, and is now acting in said capacity;

And the court being fully advised in the premises, Finds:
That the amount of property of the subsidiaries of the

debtor is large and many complex administrative questions are involved, and that it would be for the best interests of this estate and its creditors if an additional trustee was appointed.

IT IS THEREFORE ORDERED AND DECREED that Joseph Schwartz is appointed as an additional trustee of the debtor and its property.

The additional trustee shall, within five days, enter into a bond to the United States in the sum of Twenty-Five Thousand Dollars, with sureties to be approved by the court, conditioned for the faithful performance of his official duties.

The trustees shall:

1. take into their possession and control all of the property, assets and business of the debtor, wherever located;

2. prepare and file, within 30 days hereof, a full and complete inventory of the debtor's estate;

3. keep, in accordance with good accounting practices, regular accounts showing all amounts received and from what source and all amounts expended and on what accounts;

4. file with the court a report in writing as to the condition of the estate and the amount of money on hand within the first month hereafter, and every month thereafter;

5. account for and pay over all interest, commissions and moneys received upon the property of the estate;

6. continue to investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business, and the desirability of the continuance thereof, and report thereon to the judge with all convenient speed, and to that end may examine the directors

and officers of said debtor, and any other witnesses, concerning said matters, or any of them;

7. report to the judge any facts ascertained pertaining to fraud, misconduct, mismanagement, and irregularities and to any causes of action available to the estate.

The trustees shall have the power:

1. to operate the business and manage the property of the said debtor until the further order of the court, including therein, but not limiting, the generality of the foregoing power and powers:

a. to do all things necessary or convenient in the operation and conduct of said business and in the maintenance and preservation of said estate;

b. to preserve, maintain and keep the property of the debtor in good condition and repair;

c. to buy and sell, either for cash or credit, such merchandise, supplies, furniture, equipment, or other property as may be necessary or advisable in the administration, preservation, maintenance, and conduct of the debtor's business;

d. to perform or cancel existing contracts of the debtor;

e. to employ, discharge, and to pay compensation, salaries, and wages of agents, servants and employees, who may be officers of the debtor, as they deem necessary or advisable in connection with the administration, preservation, maintenance, and operation of the property, assets, and business of the debtor;

f. to pay the salaries and wages of agents, employees, laborers, and servants of the debtor, accrued or to accrue, so far as the trustees may deem it necessary or expedient to avoid detriment to the working organization of said business;

g. to pay all taxes due, or to become due, on debtor's

property, as well as all state franchise and sales taxes and all federal taxes or other impositions necessary by state or federal law;

h. to institute, prosecute, and maintain suits or proceedings at law, in equity, or under statute, in any court of competent jurisdiction, for the recovery, protection, or maintenance of the property, assets, and business of the debtor or of the trustees; and

i. to continue to defend any pending actions or suits in which the debtor or the trustees may have any interest as plaintiff, defendant, or otherwise.

The additional trustee, Joseph Schwartz, is hereby authorized and directed to exercise full voting rights of any and all stock owned by the debtor of the following corporations:

Chicago Post Office Service Building Corporation,
Columbus Parcel Post Building, Inc.,
Station "D" Post Office Building Corporation,
Dallas Parcel Post Station, Inc.,
Ferry Station Post Office, Inc.,
Irving Park Post Office Building Corporation,
McKinley Park Station Building Corporation,
North Halsted Post Office Building Corporation,
Quincy Station Post Office Building Corporation,
Roseland Building Corporation,
United States Building Corporation,
South Side Post Office Service Building Corporation,
Twenty-Second Street Station Building Corporation,
and
Villa Building Corporation.

The court reserves full right and jurisdiction to make, from time-to-time, such orders amplifying, extending, limiting, or otherwise modifying this order as to the court may seem proper.

ENTER:

JUDGE CAMPBELL.

Dated: November 7, 1949.

ORDER NO. 3.

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

In the Matter of
 NATIONAL REALTY TRUST,
 a common law trust,
 Debtor.

In proceedings for
 the reorganization
 of a corporation.
 No. 58335.

ORDER.

This cause coming on to be heard upon the verified petition of Frank M. Whiston and Stacy C. Mosser, successor trustees of the debtor herein, and upon due notice to all attorneys of record, the court being fully advised in the premises, FINDS as follows:

That Frank M. Whiston and Stacy C. Mosser are the duly qualified and acting successor trustees of the debtor herein, and that on July 3, 1950, Stacy C. Mosser tendered to this Court his resignation as trustee of this debtor.

IT IS THEREFORE ORDERED BY THE COURT:

(a) That the resignation of Stacy C. Mosser as one of the trustees of this debtor filed herein on July 3, 1950, be, and the same is hereby, accepted;

(b) That Frank M. Whiston and Stacy C. Mosser are hereby directed to file their first and final joint account and

report covering the period from December 1, 1949, to and including July 3, 1950, on or before December 1, 1950;

(c) That all banks in which funds of the debtor are deposited are hereby directed to accept certified copies of this order as their authority for honoring checks signed by Frank M. Whiston and Stacy C. Mosser, as trustee of this debtor, subsequent to July 3, 1950, and prior to the date of this order, and as their authority for honoring checks subsequent to the date of this order signed only by Frank M. Whiston, successor trustee of this debtor, until the further order of this Court.

ENTER:

JUDGE CAMPBELL..

October 17, 1950.

Examined and recommended,

October 16, 1950:

MARTIN WARD,

*Referee in Bankruptcy, as
Special Master.*

ORDER NO. 4.

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

In the Matter of

FEDERAL FACILITIES REALTY TRUST,
a common law trust,

Debtor,

NATIONAL REALTY TRUST, a com-
mon law trust,

Debtor.

In proceedings for
the reorganization
of a corporation.

No. 58334.

No. 58335.

ORDER.

This cause coming on to be heard upon the verified petition of Frank M. Whiston, successor trustee of National Realty Trust, and Joseph Schwartz and Stacy C. Mosser, successor trustees of Federal Facilities Realty Trust, and upon due notice to all attorneys of record, the court being fully advised in the premises, **FINDS** as follows:

1. That Paul E. Darrow, former trustee of National Realty Trust and Federal Facilities Realty Trust, appealed to the United States Court of Appeals from an order of this Court entered April 12, 1949, which order surcharged Mr. Darrow with \$43,447.46, being the profits made by two of the employees of said former trustee from their dealings in

the securities of these two debtors and the subsidiary corporations of each.

2. That on August 14, 1950, the United States Court of Appeals rendered its decision reversing the order of the District Court insofar as it surcharged Paul E. Darrow for said profits made by his employees, and petition for rehearing was denied by the United States Court of Appeals on September 21, 1950.

3. That the trustees of these debtors desire to appeal the decision of the United States Court of Appeals to the Supreme Court of the United States, and believe that it will be for the best interests of these trust estates to seek a reversal of the decision of the United States Court of Appeals.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Frank M. Whiston, as successor trustee of National Realty Trust, and Joseph Schwartz and Stacy C. Mosser, successor trustees of Federal Facilities Realty Trust, be, and they are hereby, authorized to file a petition for certiorari in the Supreme Court of the United States praying an appeal from the decision of the United States Court of Appeals entered August 14, 1950, and to prosecute such appeal, if allowed, and to pay any and all costs and expenses necessarily incurred in connection with such petition and appeal, all such costs and expenses to be equally divided between National Realty Trust and Federal Facilities Realty Trust.

ENTER:

JUDGE CAMPBELL.

October 26, 1950.

Examined and recommended,

October 25, 1950:

MARTIN WARD,

Referee, as Special Master.

ORDER NO. 5.

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

In the Matter of

FEDERAL FACILITIES REALTY TRUST,
a common law trust,

Debtor.

In proceedings for
the reorganization
of a corporation.
No. 58334.

ORDER.

This cause coming on to be heard on the resignation of Stacy C. Mosser as one of the co-trustees of this debtor,

IT IS HEREBY ORDERED:

1. That the resignation of Stacy C. Mosser as one of the co-trustees of this debtor be, and the same is hereby, accepted, to become effective December 1, 1950.

2. That Joseph Schwartz and Stacy C. Mosser are hereby directed to file their first and final joint account and report covering the period from December 1, 1949 to and including November 30, 1950 on or before December 15, 1950.

3. That all bank accounts of the debtor and safety deposit boxes shall be transferred to the name of Joseph Schwartz as sole trustee of this debtor; and all banks and

safety deposit vault companies are hereby directed to accept certified copies of this order as their authority for honoring checks or other documents signed solely by Joseph Schwartz as trustee on and after December 1, 1950, and until further order of this Court.

ENTER:

JUDGE CAMPBELL.

November 29, 1950.

Examined and recommended,

November 24th, 1950:

MARTIN WARD,

*Referee in Bankruptcy,
as Special Master.*

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JAN 25 1951

CHARLES E. HOFFMAN

No. 461

In the Supreme Court of the United States

OCTOBER TERM, 1950

STACY C. MOSIER, SUCCESSOR TRUSTEE OF NA-
TIONAL REALTY TRUST AND FEDERAL FACILITIES
REALTY TRUST AND JOHN W. GULD, EXECUTORS
TRUSTEE, INC., PETITIONERS

PAUL E. DAREW, FORMER TRUSTEE OF NATIONAL
REALTY TRUST AND FEDERAL FACILITIES REALTY
TRUST

ON PETITION FOR A WRIT OF HABEAS CORPUS TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH
CIRCUIT

MEMORANDUM OF DECISION AND RECHANGE
COMMISSION IN SUPPORT OF PETITION

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 461

STACY C. MOSSER, SUCCESSOR TRUSTEE OF NATIONAL REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST, AND JOHN W. GUILD, INDENTURE TRUSTEE, ETC., PETITIONERS

v.

PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM OF SECURITIES AND EXCHANGE COMMISSION IN SUPPORT OF PETITION

OPINIONS BELOW

The opinion of the Court of Appeals (R. 675-691) is reported in 184 F. 2d 1. The memorandum opinion of the District Court (R. 577-585) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on August 14, 1950 (R. 692). A petition

for rehearing was denied by the Court of Appeals on September 21, 1950 (R. 727). The petition for a writ of certiorari was filed on December 18, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

QUESTION PRESENTED

Whether a reorganization trustee should be surcharged for profits realized with his knowledge and assistance by his subordinates from trading in securities of the debtor's subsidiaries, particularly where the trustee was himself engaged in purchasing the same securities for the benefit of the estate and purchased some of them from these employees at a profit to them.

STATEMENT

The reorganization proceedings here involved were begun under former Section 77B of the Bankruptcy Act (48 Stat. 911) and subsequently made subject to various provisions of Chapter X, at which time the Commission became a statutory party pursuant to Section 208 (11 U. S. C. § 608). As such the Commission supports the petition herein. The petitioners are the successor reorganization trustee and the indenture trustee for the collateral trust bonds of one of the debtors.¹

¹ The petition for a writ of certiorari was filed in the names of Stacy C. Mosser, as Trustee of both debtors, and John W. Guild, the indenture trustee of collateral trust bonds of Federal. Respondent urges that this Court is without jurisdiction, contending that the petition was not filed by proper

The debtors, Federal Facilities Realty Trust ("Federal") and National Realty Trust ("National"), are common law trusts (R. 577) which were organized in 1929 and 1930, respectively, by Jacob Kulp and Myrtle Johnson as real estate

parties since Mosser had resigned as trustee of both debtors prior to the filing of the petition and since, in respondent's view, the indenture trustee is an "intermeddler" without the power to file a petition (Brief, pp. 6-10).

The chronology of the trusteeships is as follows: Mosser became trustee of both debtors on August 13, 1943 (R. 350). On November 7, 1949, Joseph Schwartz and Frank W. Whiston were appointed cotrustees with him of Federal and National respectively. Mosser resigned as cotrustee of National on October 17, 1950, but remained as cotrustee of Federal. On October 26, 1950, the District Court authorized the filing of the petition for certiorari in this case by Mosser and Schwartz on behalf of Federal and by Whiston on behalf of National. Thereafter, on December 1, 1950, Mosser resigned as trustee of Federal. This petition was filed on December 18, 1950. (Appendix to Respondent's Brief in Opposition, pp. i-ix.) The petition was filed in the name of Mosser, who was the trustee of record in the Court of Appeals. The present trustees are moving to be substituted on the petition in the place of Mosser. The present trustees had been duly authorized by the Bankruptcy Court to file the petition, and their filing it in the name of the trustee who had resigned has support in the accepted practice with respect to the continuation of litigation after a transfer of interest. See *Bragg v. Gerstel*, 148 F. 2d 757, 758 (C. A. 5); *Fox v. McGrath*, 152 F. 2d 616, 618-619 (C. A. 2). Cf. Rule 25 (c) of the Federal Rules of Civil Procedure. Since under Section 46 of the Bankruptcy Act (11 U. S. C. § 74) and the District Court's order the successor trustees had authority to continue the litigation, the use of the name of the trustee who had resigned is, at most, a formal defect, and the substitution of the present trustees is proper. *Gates v. Goodloe*, 101 U. S. 612, 613-614; *Bowden v. Johnson*, 107 U. S. 251, 264. In view of the facts of this case, there is not

holding companies to control and to operate 27 companies, each of which owned a parcel of real estate with a building thereon. Although Kulp retained large blocks of securities, substantial amounts of the securities of both debtors are publicly held.²

presented here the problem involved in *Davis v. Preston*, 280 U. S. 406, and *Snyder v. Buck*, 340 U. S. 15.

Irrespective of the standing of the debtors' trustees, the indenture trustee of Federal as a party to the petition presents the merits of the issue and there is no substance to respondent's contention regarding the standing of the indenture trustee. Section 206 of Chapter X (11 U. S. C. § 606) expressly provides that "the debtor, *the indenture trustees*, and any creditor or stockholder of the debtor shall have the right to be heard *on all matters arising in a proceeding* under this chapter" (italics added). This section has been construed to give these parties the absolute right to be heard in all matters arising in the proceeding which may affect their interest, and this right carries with it the right to appeal. See *Young v. Higbee Co.*, 324 U. S. 204, 210-213; *Matter of Keystone Realty Holding Co.*, 117 F. 2d 1003, 1005 (C. A. 3); *Dana v. SEC*, 125 F. 2d 542, 543 (C. A. 2); see also *In re South State Street Bldg. Corp.*, 140 F. 2d 363, 367 (C. A. 7), certiorari denied, 322 U. S. 761. In this case the indenture trustee participated in the proceedings in the district court and in the court below (R. 499, 568-569, 582, 585-586, 697) and the decision below clearly affects the interest of Federal's bondholders, on whose behalf the indenture trustee has a statutory right to be heard and with it the right to seek review.

² The capital structure of Federal consists of \$558,300 in principal amount of collateral trust bonds, of which \$84,000 have been reacquired by Federal, and 100,000 units of beneficial interest. Of these securities, \$188,200 in principal amount of bonds and 37,642 units of beneficial interest are publicly held. National has no funded debt. Its outstanding securities consist solely of 46,636.1 units of beneficial interest, of which 25,874.5 units are held by the public. (R. 518, 578, 582, 584.)

The subsidiary companies had been promoted principally by Kulp and Myrtle Johnson (R. 578-579). Land acquisitions and the construction of the buildings had been financed through the public sale of bonds, of which there were more than \$7,000,000 face amount outstanding, while the capital stock was retained by Kulp and members of his family. Subsequently, when the value of real estate properties was declining and the maturities of several bond issues were imminent, the debtors were organized to acquire the equity in these companies and the bondholders were offered securities of the debtors for their bonds in the subsidiary companies (R. 578-579, 681). While some exchanges were made, the outstanding bonds of the subsidiaries were not reduced in sufficient amounts to avoid eventual defaults and the consequent proceedings for the reorganization of the underlying companies as well as of Federal and National.

Kulp, his son, and Myrtle Johnson, were the original common-law trustees of the debtors. In 1933 they resigned following an investigation by the United States Department of Justice. At the time of his resignation, Jacob Kulp transferred to George Andresen, one of the successor common-law trustees, under a separate trust agreement, all his holdings in the top trusts and their subsidiaries for the benefit of those who had been previously induced to exchange bonds of the latter for securities of the trusts (R. 154, 517, 578).

These securities were subsequently sold at a judicial sale referred to below.

Paul E. Darrow was appointed reorganization trustee of Federal and National in 1935, and, until his resignation on August 10, 1943, he conducted the business of the debtors and managed the 27 subsidiary building companies. As manager of the debtors and the underlying properties, Darrow engaged in the purchase of bonds of the subsidiary companies at a discount for retirement. (R. 513.) During his administration, as the court below noted (R. 680-681; 184 F. 2d 1, 4-5), bonds of the subsidiaries were reduced from \$7,611,700 to \$5,197,100 face amount. These purchases were of the utmost importance to the debtor trusts, whose equity in the underlying properties depended in substantial measure upon the acquisition and the retirement of the subsidiaries' bonds as inexpensively and as expeditiously as possible.

Kulp and Miss Johnson were employed by Darrow, were paid regularly salaries out of the estates, and were placed in key positions in the reorganization. As found by the Special Master, Miss Johnson had supervision over the trustee's office, advised Darrow on all phases of management, and assisted him generally in the reorganization of the subsidiaries. She had charge of all records including complete data respecting the properties, income and expenditures of the debtors and their subsidiaries, and was the best in-

formed person in the organization regarding the various enterprises. Darrow depended upon her ability and judgment and regularly consulted her regarding purchases of the securities of the subsidiaries, and the allocation of funds for sinking fund operations and prices to be offered (R. 189-191, 209-211, 339, 513, 579).³ Kulp was retained to manage the physical properties for Darrow. He also had access to all records and information and enjoyed Darrow's absolute confidence (R. 182, 199-200, 512-513).

Kulp and Miss Johnson were retained by Darrow with the express understanding that they were to be permitted to trade in securities of the debtors' subsidiaries (R. 511). Although Darrow testified that he had discussed their employment with the court and with counsel, and others, it is clear, as found by the Special Master, "that he did not specifically tell these persons that Miss Johnson and Kulp would be dealing in the securities of the subsidiaries" (R. 512). During their employment by Darrow, Kulp and Miss Johnson traded extensively in bonds of the debtors' subsidiaries and, indeed, on many occasions sold bonds directly to Darrow as trustee. Much of this trading was through Colonial Securities Cor-

³ With respect to all but seven or eight subsidiaries Darrow had sole authority to determine prices. In the case of the other subsidiaries, maximum prices were fixed by the boards of directors or special trust committees, but Darrow usually had discretion to raise or lower the prices within prescribed limits (R. 513).

poration ("Colonial"), a corporation wholly owned by Kulp and Miss Johnson. For a substantial period of Darrow's trusteeship, Colonial shared office facilities and personnel with the debtors' estates and dealt largely in securities of the debtors and their subsidiaries (R. 168, 513, 538-540, 579). The profits realized by them on these transactions amount approximately to \$43,000, of which \$8,600 was derived from direct sales to Darrow. In many instances, when purchasing from Miss Johnson, Darrow paid for the securities in advance of delivery or prior to her own purchases (R. 337-338, 520-521). Frequently, bonds purchased by Miss Johnson or Colonial were sold at a profit to Darrow on the same day, or within a few days after their purchase, and some of the bonds thus sold to Darrow had been purchased by Miss Johnson from bondholders who had come to the office to sell their bonds to the trust. Darrow made no inquiry as to the prices Miss Johnson or Colonial had paid for the securities; he asked for no accounting and made no check of Colonial's books, to which apparently he had access (R. 210-211, 341, 514-515, 538-539).

By far the largest single transaction involved the acquisition by Miss Johnson and her associates of the substantial block of securities which had been turned over by Kulp to the Andresen trust (pp. 5-6, *supra*). These were acquired by Miss Johnson at a total cost of \$24,000 (R. 518)

at a judicial sale ordered by the Superior Court of Cook County, Illinois. These securities consisted of two lots, one involving \$199,000 face amount of bonds of subsidiaries, the other substantial amounts of the debtors' securities.*

About one-half of the purchase price was obtained by Miss Johnson through a resale to Darrow of \$128,700 in face amount of bonds of the subsidiaries for \$12,447, although the cost to Miss Johnson for all the securities in that lot was approximately \$8,000 (R. 519-521). As was his custom (R. 519), Darrow paid for these securities in advance of delivery and, as the court below stated, "it is undisputed that the checks issued by Darrow to Colonial were used in making the payment due under the bid" (R. 683; 184 F. 2d 1, 6). Additional bonds of the subsidiaries were sold by Miss Johnson to customers of Colonial, who subsequently resold some of them to Darrow (R. 522). As a result, Miss Johnson realized a total of \$34,905 on the securities of the subsidiaries, or \$10,701 more than she had paid for both lots, and obtained the debtors' securities at no net cost (R. 520-523, 556). The treatment of the latter securities, which may determine control over the reorganized debtors, is now pending

* These securities were: \$286,100 principal amount of Federal bonds; 62,358 units of beneficial interest of Federal, representing over 60 percent of the equity in Federal; and 10,761.6 units of National, representing about 25 percent of the equity in National (R. 518).

before the District Court (R. 522, 557).^{*} The surcharge of the trustee which the court below set aside includes only the profits realized on the resale of the securities of the subsidiaries.

In his report (R. 498-560), filed on April 28, 1948, the Special Master concluded that on the basis of the evidence Darrow's acquiescence and active support of the trading activities of Kulp and Miss Johnson at a time when "the trusts and their subsidiaries were attempting to retire their indebtedness as rapidly and as inexpensively as possible * * * was pregnant with potential conflicts of interest" (R. 553), and that for allowing his employees' "infidelity to inflict direct financial loss upon the trusts" Darrow was derelict in his duties as trustee (R. 554). The Special Master, accordingly, recommended that Darrow be surcharged in the amount of \$43,000, representing the profits which these employees obtained as a result of their trading in securities of the debtors' subsidiaries. On consideration of the evidence and of the Special Master's report, the district court concluded that the evidence supported the findings and recommendations of the Special Master. On appeal by Darrow, the court below reversed the decision of the district court basically on the theory that, regardless of the

^{*} In accordance with the recommendation of the Special Master, the District Court has also reserved jurisdiction to permit consideration of an additional surcharge against Darrow, depending upon the disposition of these securities (R. 556-557).

profits made by Kulp and Miss Johnson, Darrow's purchases had been beneficial to the debtor (R. 675-692).

ARGUMENT

This case involves a question of substantial importance in the administration of bankruptcy reorganization. The decision below appears to hold that a trustee who was not himself engaged in profiting from the estate cannot be held responsible for knowingly permitting subordinates in responsible positions to engage in a course of conduct in conflict with the interest of the estate. The statutory provisions and judicial decisions emphasizing the importance of a loyal and disinterested trustee in the management of a bankruptcy reorganization become meaningless if the trustee is permitted to shut his eyes to activities of his subordinates in which he himself is forbidden to engage.

1. Although under the Bankruptcy Act the reorganization trustee is not prohibited from employing officers affiliated with the estate, it is undeniable that in retaining their services the trustee may not enter into any arrangement in conflict with his fiduciary responsibility for the proper and effective administration of the reorganization. Nor is the trustee thereby relieved "of the duty of exercising care and prudence within the field left to his discretion." *United States ex rel. Willoughby v. Howard*, 302 U. S. 445, 452. The retention of Miss Johnson

and Kulp, whatever their competence, upon condition that they be permitted to trade in the securities of the debtors and their subsidiaries, was in itself inconsistent with the elementary dictates of common prudence. Since Darrow as trustee and as manager of the subsidiaries' properties was engaged in the purchase of bonds of the subsidiaries, the employment of Kulp and Miss Johnson under the circumstances gave them, in addition to their regular remuneration, continuous opportunities for profiting to the detriment of the estate on the basis of inside information, and thus necessarily led to divided loyalties and continuous conflicts of interests in the day-to-day administration of the reorganization proceedings. Darrow's tolerance and active support of the trading activities of Kulp and Miss Johnson, coupled with his complete failure to exercise an independent scrutiny of these activities, constitute an abdication of his supervisory duties with respect to his subordinates and a flagrant abuse of his fiduciary responsibilities for the proper administration of the estates in reorganization.

The circumstance that Darrow himself did not personally profit by the trading of his subordinates—and this apparently is emphasized by the court below (R. 685-686; 184 F. 2d 1, 7)—is beside the point. It is axiomatic that the standards of fiduciary responsibility, which exclude divided loyalties and conflicts of interests with respect to

the trustee, necessarily impose upon him an affirmative obligation not to tolerate—much less actively support—the same vices in his subordinates. Divided loyalties and conflicts of interests produce the same harm when they prevail among employees, upon whose skill and knowledge the trustee relies for the proper discharge of his own fiduciary responsibility, as when the trustee himself is involved. Accordingly, Darrow was guilty of misconduct in deliberately condoning and actively supporting a course of dealing by his subordinates which was obviously against the interests of the estate. The fact that the subordinates were in this case the original promoters and underwriters of the debtor is not the basis for imposing liability, but it does highlight the extent of the departure in the instant case from the established standards which emphasize the requirement of loyal and disinterested services by those charged with the administration of bankruptcy reorganization.

2. The decision of the court below emphasizes that Darrow's course in purchasing the securities of the subsidiaries was beneficial to the estate, and that he purchased the securities from Miss Johnson or Colonial at prevailing "market" prices (R. 681, 683, 184 F. 2d 1, 5; 6). We believe it is irrelevant that in view of the rising real estate market the estates have benefited from Darrow's purchase program. The surcharge would compensate the estates for additional bene-

fits they might have received had Darrow acted properly. Aside from the question of Colonial's influence on the "market,"⁶ Miss Johnson's advice to Darrow with respect to the timing of, and prices for, his purchases necessarily was in conflict with her own interest as a trader in the over-the-counter market.⁷ In any event, systematic trading by Miss Johnson and Kulp, directly or through Colonial, was bound to interfere with Darrow's opportunities to make the favorable purchases which Miss Johnson or Colonial appropriated for their own account, and Darrow's common practice to pay Miss Johnson or Colonial in advance of delivery tended to accentuate this conflict of interest. As already noted above (pp. 7-9, *supra*), Miss Johnson and Colonial generally purchased securities at less than Darrow's prices and in their numerous sales to him they sold at a profit, and these include securities which

⁶ There is testimony in the record to the effect that (R. 160-161): "While Colonial was active, brokers contacted it regarding the purchase and sale of bonds. As a result of those contacts, bonds were sold to Darrow and this represents a substantial portion of the bonds he bought. Brokers who wanted to sell bonds would contact Colonial, find out the price, and then the bonds would be sold to Darrow. Apparently, Colonial was the source of market information or clearing house for the bonds of the subsidiaries."

⁷ According to Darrow's own testimony (R. 211), when bonds did not come in fast enough, he frequently discussed with Miss Johnson whether the price was too low, and after a new price was established, anybody who offered bonds, including Johnson and Colonial, could get that price. That price would continue in effect until Johnson and he got together and changed it.

Miss Johnson had purchased from bondholders who had come to Darrow's office to sell their bonds. The acquisition of the securities in the Andresen trust sold at the judicial sale, described above (pp. 8-10, *supra*), provides a graphic illustration in point.

As found by the Special Master (R. 514), Darrow's attitude was that "their [Miss Johnson's or Colonial's] profits, if any, on sales to him, were none of his concern" and that "he considered the price asked by Miss Johnson a 'personal' matter." The fiduciary standards by which a reorganization trustee's conduct must be measured, we submit, cannot condone that attitude. Cf. *Meinhard v. Salmon*, 249 N. Y. 458, 164 N. E. 545 (1928).

3. The cases cited by counsel for Darrow and relied upon by the court below (R. 686-689; 184 F. 2d 1, 7-9) do not in our view support the decision below, but merely stand for the general proposition, which we concede, that a trustee is only required to exercise reasonable care and prudence in the administration of his trust and that he is not subject to surcharge for the wrongful conduct of his employees where such misconduct has occurred without the trustee's fault or neglect and through no lack of proper supervision. However, in relieving the trustee of any liability on the undisputed facts in the instant case, the decision of the court below is inconsistent in principle with the cases holding that a trustee must be sur-

charged for injury resulting from his negligence in supervising his employees. *Cf. Carson, Pirie, Scott & Co. v. Turner*, 61 F. 2d 693 (C. A. 6); *In re Curtis*, 76 F. 2d 751 (C. A. 2).

The earlier decision of the court below in *In re Breger Kosher Sausage Co.*, 129 F. 2d 62, is distinguishable on its facts and does not appear to support so sweeping a holding as that involved in the instant case. However, the court's reliance upon it as holding that a trustee who does not personally profit cannot, as a matter of law, be held accountable for the profits which he knowingly permits his employees to realize emphasizes the sweeping character of the decision below and consequently the need for granting the writ.

4. Insofar as the court's holding is based on lack of precedent for surcharging the trustee for the profits realized by his employees, it ignores the extensive powers of a bankruptcy court over the conduct of fiduciaries. As this Court has pointed out in *American United Mutual Life Ins. Co. v. City of Avon Park*, 311 U. S. 138, 146:

Where * * * investigation discloses the existence of unfair dealing, a breach of fiduciary obligations, profiting from a trust, special benefits for the reorganizers, or the need for protection of investors against an inside few, or of one class of investors from the encroachments of another, the court has ample power to adjust the remedy to meet the need. * * *

That power is ample for the exigencies of varying situations. It is not dependent on express statutory provisions. It inheres in the jurisdiction of a court of bankruptcy.

In enforcing this standard of fiduciary responsibility, the bankruptcy courts have applied a variety of appropriate sanctions.* Under the undisputed facts of this case, surcharging the trustee for profits made by his advisers is entirely appropriate. The bankruptcy court is not required to measure the precise extent of injury to the estates by determining which aspect of the reorganization has been corrupted by the selfish counsel of the trustee's advisers and which has not. Administratively, such a task is not feasible since "the incidence of a particular conflict of interest can seldom be measured with any degree of certainty." *Woods v. City National Bank and Trust Co.*, 312 U. S. 262, 268. Cf. *Taylor v. Standard Gas & Electric Co.*, 306 U. S. 307, 323. Such is particularly the case where, as here, the manifestations of conflicting interests were not occasional but persisted over a period of

* See, for example, *Taylor v. Standard Gas & Electric Co.*, 306 U. S. 307, subordination of parent's claims against subsidiary; *Woods v. City National Bank and Trust Co.*, 312 U. S. 262, denial of compensation; *Young v. Higbee Co.*, 324 U. S. 204, accounting for profits; *In re Norcor Mfg. Co.*, 109 F. 2d 407 (C. A. 7), limitations of claims to cost; *In re Realty Associates Securities Corp.*, 56 F. Supp. 1008 (E. D. N. Y.), disqualification from serving on a committee; *In re Schroeder Hotel Co.*, 86 F. 2d 491 (C. A. 7), enjoining communications with security holders.

years.* The profits realized by Darrow's subordinates, with Darrow's aid and acquiescence, provide both an equitable and appropriate determination of Darrow's liability to the estates for the grave and, in a very real sense, the immeasurable harm which neglect of his duties and responsibilities has occasioned. He cannot now defeat that liability by putting the estates to the risk of proceeding directly against his advisers or of establishing the extent of their liability.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted.

Respectfully submitted.

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Securities and Exchange Commission.

JANUARY 1951

* The period of the transactions involved in this case runs from the time of Darrow's appointment in 1935 through December 31, 1941, R. 432-476).

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**IN THE
Supreme Court of the United States**

OCTOBER TERM, 1950.

No. 461

IN THE MATTER OF

**FEDERAL FACILITIES REALTY TRUST, A COMMON
LAW TRUST, AND NATIONAL REALTY TRUST, A
COMMON LAW TRUST,**

Debtors.

**STACY C. MOSSER, SUCCESSOR TRUSTEE OF NATIONAL
REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST, AND
JOHN W. GUILD, INDENTURE TRUSTEE, ETC.,**

Petitioners,

vs.

**PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY
TRUST AND FEDERAL FACILITIES REALTY TRUST,**

Respondent.

BRIEF FOR PETITIONERS.

CARL W. MOLFINGER,

J. EDGAR KELLY,

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TRUST AND FEDERAL FACILITIES REALTY TRUST,**

Respondent.

BRIEF FOR PETITIONERS.

I.

THE OPINION IN THE COURT BELOW.

The opinion in the Court of Appeals for the Seventh Circuit is reported in 184 F. (2d) 1, and appears at pages 675-691 of the record.

II.

JURISDICTION.

Jurisdiction to review this case is based upon Section 1254 of the Judicial Code, as revised by the Act of June 25, 1948 (28 U. S. C. 1254), and Section 24 of the Bankruptcy Act, as amended by the Act of June 22, 1938 (11 U. S. C. 47).

III.

STATEMENT OF THE CASE.

In the early 1920's, Jacob Kulp was president and Myrtle Johnson secretary of Jacob Kulp & Company, Inc., an Illinois corporation, which organized, promoted and controlled twenty-six building corporations, the properties of most of which were leased to the United States Government for post office use (R. 167, 181). These buildings were financed by the sale of mortgage bonds to the public, while the capital stock in each corporation was issued to Jacob Kulp, individually. In addition, Jacob Kulp owned in fee certain premises in Los Angeles, upon which a building was constructed for post office use. These twenty-seven properties were subject to large first mortgage bond issues and, in some instances, second mortgage bond issues as well (R. 152-153, 167-168). In 1929, the promoters of these building corporations, being confronted with a decrease in rents resulting from the cancellation and modification of the leases with the government and a general decrease in other rents, established two common law trusts and attempted to persuade the holders of bonds issued by these various building corporations to exchange their securities for securities issued by one or the other of these two trusts, (R. 159, 181).

The two common law trusts so created are known as Federal Facilities Realty Trust, which was created by declaration of trust dated September 10, 1929 (hereinafter referred to as Federal) and National Realty Trust, which was created by declaration of trust dated July 2, 1930 (hereinafter referred to as National). The original trustees of each trust were Jacob Kulp, Lee H. Kulp, and Myrtle Johnson. To Federal, Jacob Kulp transferred all of the capital stock of fourteen of the building corporations, in exchange for one hundred thousand shares of beneficial interest and three hundred thousand dollars, face value, collateral trust bonds issued by said trust. These collateral trust bonds were secured by an indenture of mortgage dated October 1, 1929, under which John W. Guild, as successor trustee, holds all of the capital stock of the fourteen building corporations as security (R. 293, 502). To National, Jacob Kulp transferred all of the stock of the other twelve building corporations, plus the fee in the Los Angeles property (which was later incorporated) in exchange for twenty thousand shares of beneficial interest in this trust (R. 181).

In July of 1933, as the result of an investigation by the Department of Justice, Jacob Kulp, Lee Kulp, and Myrtle Johnson resigned as trustees of Federal and National, and George H. Andresen and Harry R. Holden were named to succeed them (R. 8, 150). At the same time, Jacob Kulp delivered to Andresen, under a separate trust agreement, bonds issued by the various building corporations, as well as bonds and units of beneficial interest in the two trusts which he had in his possession at that time (R. 154-156). These securities will be discussed further on in this statement of the case.

These proceedings for the reorganization of Federal and National were filed in December, 1934; and upon the approval of the petitions, Paul E. Darrow was appointed

trustee of each trust, which position he held until he resigned on August 10, 1943, following a thorough financial investigation and report of his administration as trustee, made by Frederick B. Andrews pursuant to order of court entered January 19, 1942, on the application of the Securities and Exchange Commission (R. 37, 548). Stacy C. Mosser was appointed as successor trustee of each debtor on August 10, 1943 (R. 9, 38). Mosser continued to act as trustee of both National and Federal until October 17, 1950, at which time he was succeeded by Frank M. Whiston as trustee of National and, on December 1, 1950, Joseph Schwartz succeeded him as trustee of Federal.

On October 15, 1943, Darrow filed his final accounts as trustee of each trust; and Mosser, as successor trustee, the Securities and Exchange Commission, and Guild, as successor trustee under the indenture securing the collateral trust bonds of Federal, filed objections to these accounts (R. 500-510). The final accounts of Darrow, and the objections thereto, were referred by the District Court to a special master (R. 146-148). The report of the special master sustained the objections to Darrow's accounts insofar as they sought to surcharge him with \$43,447.46, being profits made by two of his employees who were permitted to trade in securities of the trusts consisting of bonds issued by the subsidiary corporations of the debtor trusts (R. 552-557).

The report of the special master was approved by the District Court, and the accounts of Darrow, as trustee, surcharged with said profits; pursuant to the recommendation of the special master, a ruling on all other objections to the trustee's accounts was reserved by the District Judge pending further proceedings (R. 577-585). From this order of the District Court, Darrow appealed and Guild filed a cross-appeal (R. 585-587, 595-596). The Court of Appeals for the Seventh Circuit reversed the order of

the District Court insofar as it surcharged Darrow's account with the profits made by his employees; in all other respects the order was affirmed (R. 675-691). No action was taken on the matters raised on the cross-appeal (R. 690-691).

The evidence presented to sustain the objections to Darrow's accounts disclosed that after his appointment as trustee, he occupied the former offices of the trusts and employed Jacob Kulp and Myrtle Johnson to assist him in his duties (R. 318). They were familiar with the business, having been in control of these trusts and corporations since their creation. Kulp and Johnson, at the time of Darrow's appointment, were operating, from the office of these trusts, Colonial Securities Company (hereinafter referred to as Colonial), a corporation wholly owned and controlled by them which dealt largely in the securities of these trusts (R. 188). They were also winding up the affairs of Jacob Kulp and Company, which was then in bankruptcy (R. 318).

Darrow, with full knowledge of the previous connections Kulp and Johnson had with these trusts and the various capacities in which they were then acting, employed Jacob Kulp to manage the buildings owned by the subsidiary corporations of each trust, and permitted him to have access to the books and records of the trusts and their subsidiaries (R. 199-200). Myrtle Johnson's duties were numerous. She had complete supervision of the trustee's office, access to all books and records, acted in behalf of the trustee when bondholders came to his office or made inquiry by telephone, advised the trustee on all phases of management, assisted him in the reorganization of the subsidiary corporations and, at times, fixed the prices the trusts or the subsidiary corporations should pay for bonds (R. 188, 190, 199-200, 202, 203, 206, 281-287, 319). For these services, Kulp was paid a salary of \$300 a month and given

free use of an apartment worth \$135 to \$140 a month (R. 169, 182). Miss Johnson received a salary of \$250 a month, and she and Kulp were permitted to continue to operate Colonial (R. 169, 182, 202-203). Except for dealing in securities associated with the trusts, Colonial was then practically in liquidation and doing little business (R. 150).

During the period of Darrow's administration, the debtor trusts and Colonial Securities Company occupied a common office which had two entrances, one marked Colonial and the other with the names of the debtor trusts, both of which opened into what appeared to be one large office (R. 151, 206, 538-539). Darrow and Colonial were listed under one telephone number, and the books of the trusts and Colonial were kept by the bookkeeper employed by the trustee (R. 150, 152, 539). The cashier employed by Darrow also did work for Colonial, as did his stenographer (R. 153, 156). Miss Johnson occupied a private office in that portion of the suite occupied by the trustee, and bondholders coming to the office of the trustee were usually referred to her (R. 153).

While so employed, Miss Johnson and Kulp, individually, and in the name of Colonial, intercepted and purchased bonds brought into the trustee's office by bondholders seeking to sell them (R. 168, 513, 579). Miss Johnson and Kulp would purchase these bonds for less than Darrow was paying, and then sell them to Darrow or some outside investor at a profit. Darrow at all times had knowledge of these dealings and made no objection to them; in fact, he encouraged these activities by assuming the attitude that "it was not any of my business if an employee made a profit" and at times paid for bonds prior to delivery (R. 205, 295-296).

The largest single transaction involved the acquisition by Miss Johnson and Kulp of the substantial block of securities previously mentioned as the securities Kulp de-

livered to Andresen in July, 1933. These securities were divided into two lots and sold by order of the Superior Court of Cook County, Illinois, in the case of *Seligman v. Kulp* (R. 517). Lot I consisted of bonds of the various subsidiary corporations in the face amount of \$199,000 (R. 518). Lot II consisted of \$286,100 principal amount of Federal bonds secured by the indenture under which Guild is trustee, 62,358 units of beneficial interest of Federal, and 10,761.6 units of National (R. 518). These last mentioned securities are held in a safety deposit box pending the determination of the question of ownership by the District Court and are not involved in the surcharge which is the subject of this appeal (R. 557). The ultimate owner of these securities, however, will control sixty percent of the equity in Federal and more than fifty percent of its bonds, and twenty-five percent of the equity in National (R. 165, 292, 294).

All of the securities in both Lots I and II were purchased for the sum of \$24,203.55. Prior to the consummation of this sale, Darrow delivered to Miss Johnson \$12,447.55, which was the total of fifteen checks in varying amounts drawn on the bank accounts of National and Federal and six of their subsidiary corporations (R. 172). This amount, plus \$11,756, which Miss Johnson borrowed from two other individuals, accounted for the entire purchase price. Miss Johnson delivered to Louis Goldman, one of the attorneys for petitioning creditors in these proceedings, the sum of \$24,203.55 with instructions to arrange for the purchase of all of the securities in Lots I and II at the sale to be held in the *Seligman* case. Upon the consummation of the sale, Miss Johnson received all of the securities in Lot I from Goldman (R. 162). From the bonds so received, she gave Darrow bonds having a face value of \$128,700 in exchange for the money he had given her; the balance of these bonds in the amount of \$60,300 she sold to outside investors for \$19,457.50, after giving bonds having a face value of \$10,000 to the two individuals

from whom she had borrowed the \$11,756.¹ These gifts were in the nature of a bonus, because the loans were repaid in cash from the \$19,457.50 received from the sale of the bonds she retained (R. 522). The employees of the trustee thus realized a profit of \$10,701.50 on this transaction; in addition, they claim to own the securities of these debtors in Lot II which remain in the safety deposit box rented in the name of Attorney Goldman (R. 162, 292, 294).

The total surcharge of \$43,447.46 which the District Court assessed against Darrow was computed as follows:

Profits made by employees from sales direct to Darrow	\$ 8,624.10
Profits made by employees from transactions with the public	24,121.86
Profits made by employees from securities purchased at a judicial sale and resold to the public	10,701.50
Total surcharge	\$43,447.46

IV.

SPECIFICATION OF ERRORS.

The Court of Appeals erred in the following respects:

1. In holding that a trustee should not be surcharged for profits made by his employees who were permitted to deal in securities of his trust if he was not derelict in hiring them in the first instance.
2. In holding that a trustee should not be surcharged

¹ It is of interest to note that a plan similar to this was followed by Miss Johnson in November of 1936 when she purchased the assets of Jacob Kulp & Company at a bankruptcy sale for \$1,500, of which amount Darrow had contributed \$750 from trust funds. Part of these assets were accounts receivable alleged to be owed by various of the subsidiary corporations to the bankrupt. Later, these so-called accounts receivable were allowed in the reorganization plans of some of the subsidiaries (R. 218-219, 220-224, 534-538).

for profits made by his employees who were permitted to deal in securities of his trust, if the trustee himself made no profit therefrom.

3. In holding that a trustee should not be surcharged for profits he permitted his employees to make from the sale of such securities to him.

4. In holding that a trustee should not be surcharged for profits he permitted his employees to make from the sale of such securities to him, providing he paid no more than the "market price".

5. In holding that a trustee should not be surcharged for profits he permitted his employees to make from sales of such securities to him if the securities increased in value after he acquired them.

6. In holding that Darrow acted with the care of an ordinarily prudent man in the management of his own property.

7. In failing to find that Darrow was negligent and derelict in his duty to properly supervise the conduct of his employees.

8. In failing to find that Darrow was negligent in failing to take action to recover the illegal profits made by his employees.

9. In failing to find that the trust estates suffered losses.

10. In reversing the order of the District Court insofar as it surcharged Darrow with the profits made by his employees.

11. In reversing findings of fact of the special master, concurred in by the District Court, without a showing that such findings were clearly erroneous.

SUMMARY OF ARGUMENT.

1. The Court of Appeals in its decision in this matter has erroneously set aside the concurrent findings of fact of the Special Master and the District Judge, without finding them to be clearly erroneous.

2. A trustee who permits his confidential employees to trade in the securities of his trust violates his fiduciary duty and should be surcharged for the profits realized by such employees.

A. A trustee may not deal in securities of his trust for his own profit.

B. A trustee's key confidential employees cannot deal in securities of the trust for their own profit.

C. A trustee who knowingly permits his employees to gain prohibited profits is liable to surcharge for such profits.

ARGUMENT.**POINT I.**

The Court of Appeals in Its Decision in This Matter Has Erroneously Set Aside the Concurrent Findings of Fact of the Special Master and the District Judge, Without Finding Them to Be Clearly Erroneous.

In the decision in this case, the Court of Appeals has set aside findings of fact made by the Special Master and concurred in by the District Court, without showing such findings to be clearly erroneous. The Special Master found that:

"A trustee cannot be said to have exercised due care where he knowingly allows his employees to work for him under conditions where their loyalties must necessarily be divided.

"(1) In this respect, Mr. Darrow was clearly derelict in entering into an agreement with Miss Johnson and Mr. Kulp whereby they were granted permission to continue their securities business, which, as he surely must have known, dealt extensively in the securities of the trusts and their subsidiaries. A reasonably careful and prudent man could hardly fail to recognize the obvious fact that a situation wherein the trusts and their subsidiaries were attempting to retire their indebtedness as rapidly and as inexpensively as possible, and where the employees of the trusts were trafficking in the bonds of the subsidiaries for profit was pregnant with potential conflicts of interest."

and further:

"It is clear that Mr. Darrow failed to take any action at all upon discovering that his employees were dealing in the underlying securities for profit. On the contrary, the record indicates that he not only ac-

quiesced in such activity and permitted disloyalty to flourish, but also knowingly purchased securities from them and thereby allowed their infidelity to inflict direct financial loss upon the trusts in many instances." (R. 553-554)

The Court of Appeals rejected this finding by reaching opposite conclusions, as set forth in the following words:

"If after such employment Darrow was obliged to exercise 'the care of an ordinarily prudent man in the management of his own property,' it is difficult to see why he should be surcharged under the facts disclosed in this case. His supervision of the trust estate would disclose that the debtor trusts were being largely benefited by the fact that he was enabled to purchase from such part time employees at market prices, the securities of their subsidiaries." (R. 685)

By its action, the Court of Appeals has ignored the well-established principle that concurrent findings of fact by a Special Master and District Judge will not be set aside on appeal except for clear mistake or unless the record discloses them to be clearly erroneous (*Crawford v. Neal*, 144 U. S. 585; *In re Willoughby*, 93 F. (2d) 932; *Boyce v. Chemical Plastics, Inc.*, 175 F. (2d) 839; *Crimmins v. Woodson*, 177 F. (2d) 788; Rule 52(a) of Federal Rules of Civil Procedure).

The necessary requisites for setting aside findings of fact are not present in the instant case.

We, therefore, respectfully submit that it was error for the Court of Appeals to set aside the aforesaid findings of the Master concurred in by the District Court.

POINT II.

A Trustee Who Permits His Confidential Employees to Trade in the Securities of His Trust Violates His Fiduciary Duty and Should Be Surcharged for the Profits Realized by Such Employees.

The decision in this case involves a question of fundamental importance in the administration of trusts and of bankruptcy reorganization. The former trustee knowingly permitted Miss Johnson and Kulp, who were his trusted confidential employees holding strategic positions in the administration of the trusts, to deal in securities of their trusts for their own personal gain. When these key employees dealt in the securities associated with the trusts, they thereby breached their fiduciary duty to their employer and to the trusts. Because Trustee Darrow had knowledge of the actions of his employees and acquiesced in such actions, he himself became properly liable to the surcharge imposed upon him by order of the District Court.

A.

A Trustee May Not Deal in Securities of His Trust for His Own Profit.

It is unquestioned that the trustee himself could not have engaged in transactions for his own benefit and profit in the securities of the trust to which he himself owed a fiduciary duty. *Magruder v. Drury*, 235 U. S. 106 (1914); *Michaud v. Girod*, 45 U. S. 503 (1846). This concept is applied with particularity to transactions in properties or securities connected with the trust. *Jackson v. Smith*, 254 U. S. 586 (1921); *In re The Van Sweringen Company*, 119 F. (2) 231 (C. C. A. 6, 1941); *Irving Trust Co. v. Deutsch*, 73 F. (2) 121 (C. C. A. 2, 1934). A trustee may not compete with his beneficiaries or his trust in

the acquisition of securities. *Wooten v. Wooten*, 151 F. (2) 147 (C. C. A. 10, 1945).

Although Darrow did not himself deal in the securities of his trust to his own profit he knowingly permitted his confidential and informed employees to undertake dealings in which he himself unquestionably could not have engaged.

B.

A Trustee's Key Confidential Employees Cannot Deal in Securities of the Trust for Their Own Profit.

The facts in this case disclose that Miss Johnson and Kulp were entrusted in large part with the operational and administrative problems of the trust and that they had confidential information with respect to the operation of the trust and its subsidiaries in their possession or available to them. They were permitted to deal in securities of the trusts in their own names or in the name of Colonial, the corporation controlled by them which they operated from the office occupied jointly with the trustee (R. 150). Both Miss Johnson and Kulp were fully informed of the operations of the trust and Miss Johnson participated in a direct and responsible way in the trust's most confidential aspects and operations, such as participating in the determination of prices to be paid for securities, the determination of the terms of plans of reorganization and other responsible functions. The facts in this case make it perfectly clear that the positions of Kulp and Miss Johnson were those of trusted, confidential assistants of the trustee in important key positions with full knowledge of the operations; these facts imposed upon Kulp and Miss Johnson the duty of complete fidelity and undivided loyalty. *Fleishhacker v. Blum*, 109 F. (2) 543 (C. C. A. 9, 1940), *Trice v. Comstock*, 121 F. 620 (C. C. A. 8, 1903).

It has recently been held by the Superior Court of Delaware that an employee who acts for his own profit upon confidential information derived through his employment is liable for the profits made therefrom even though injury to the employer could not be shown. *Brophy v. Cities Service Co.*, 70 Atl. 2, 5 (Del. Ch. 1949). The court there stated:

"Public policy will not permit an employee occupying a position of trust and confidence toward his employer to abuse that relation to his own profit, regardless of whether the employer suffers a loss."

Cf. *Governor Clinton Co., Inc. v. Knott*, 120 F. (2d) 149 (C. C. A. 2, 1941), and *In re Frazin & Oppenheim*, 181 Fed. 307 (C. C. A. 2, 1910).

The trading transactions of Kulp and Miss Johnson fall into three patterns:

(a) They intercepted and purchased bonds which were brought to the office of the trustee for sale, paying a price lower than that which they knew the trustee would pay, and the employees then resold these bonds to the trustee on the same day or a short time thereafter at the trustee's higher purchase price (R. 296);

(b) After purchasing bonds which were brought to the office of the trustee for sale, they sold these bonds elsewhere at a profit (R. 275); and

(c) They used funds of the trust, obtained in advance from the trustee, in order to purchase securities of the trust at prices far below those being paid by the trustee for the same securities and then delivered to the trustee a portion of such bonds in order to offset the trust money advanced by the trustee to them. These employees then sold the remaining securities elsewhere at a substantial profit to themselves (R. 171-5, 205, 431).

Darrow had full knowledge at all times that his employees were dealing in these securities, and he also knew

that Colonial was controlled by his employees and was buying and selling securities of the trust (R. 203). It is not contended by Darrow that any of these facts with respect to his employees' dealing in the securities of the trust were concealed from or unknown to him and he admits such knowledge.

The opinion of the Court of Appeals below refers to Kulp and Miss Johnson as part time employees (R. 680, 685). This designation obscures the fact that Kulp and Miss Johnson were receiving substantial salaries, were spending all or substantially all of their business time in the office of the trustee or in the buildings owned by the subsidiaries, and were important officials in the administration and operation of the trusts; the record supports the conclusion that Miss Johnson actually dominated many aspects of the affairs of these trusts. Colonial was practically in liquidation at the time of Darrow's appointment (R. 150); the securities business was in the doldrums and Colonial's operations were almost entirely confined to the bonds associated with the trust (R. 150). The employment of Kulp and Miss Johnson by Darrow, instead of interfering with their management of Colonial, really coordinated extremely well with their operation of Colonial. Miss Johnson's position as assistant to the court's trustee endowed her with special status in the eyes of the bondholders, supplied her with confidential data, and even accorded to her a first opportunity to deal for her own benefit with bondholders tendering their securities for sale in Darrow's office.

Furthermore, the fact that Kulp and Miss Johnson had been the promoters of the original enterprise should have alerted the trustee to the especial necessity of maintaining close watch upon them to see that there was no breach by them of their fiduciary responsibility and no action by them in conflict with the proper and effective administration of the reorganization. Kulp and Miss Johnson were

key employees who must themselves observe fiduciary duties to the estate and to the trustee, and the trustee could not sit idly by, with full knowledge of the transactions in which Kulp and Miss Johnson were engaged, and permit his trusted employees to obtain profits which he himself would have been forbidden to take (R. 209-211).

C.

A Trustee Who Knowingly Permits His Employees to Gain Prohibited Profits Is Liable to Surcharge for Such Profits.

Darrow's conduct in permitting his employees to traffic in the securities of the trust and thereby to violate their fiduciary obligations to him and to the trust, was a direct violation of his fiduciary duty as trustee. Darrow's conduct is such as to render him fully liable to surcharge within the general principles of the common law of trusts, as is stated by Scott, Law of Trusts (1939 Ed., Vol. II, Sec. 225.1, pp. 1191-2).

"Where the trustee is himself at fault. The trustee is liable for the acts of an agent employed by him in the administration of the trust if the trustee is himself guilty of a violation of a duty to the beneficiaries. Thus where an agent does an act which, if done by the trustee would constitute a breach of trust, the trustee is liable if he directed or permitted the doing of the act. He is liable if he improperly delegates to an agent the performance of acts which he was under duty personally to perform. He is liable for the act of an agent employed by him in the administration of the trust, if he did not use reasonable care in the selection or retention of the agent. The trustee is liable for acts of the agent if the trustee has failed to exercise proper supervision over the conduct of the agent. He is liable if he unnecessarily entrusts money or securities of the trust or title deeds or other property to an agent; or permits the agent unnecessarily to retain the property, with the result that the agent mis-

appropriates it. He is liable where the agent does an act which if done by the trustee would be in breach of trust, if the trustee approved or acquiesced in or concealed the act of the agent. The trustee is liable if the agent does an act which if done by the trustee would be in breach of trust, if he does not take proper steps to compel the agent to redress the wrong."

The principles of the common law of trusts which specify that a trustee shall be liable for certain prohibited actions of his agents are also clearly set forth in the Restatement of the Law of Trusts, Vol. I, Sec. 225, page 639, as follows:

"Section 225. Liability for Acts of Agents.

(1) Except as stated in Subsection (2), the trustee is not liable to the beneficiary for the acts of agents employed by him in the administration of the trust.

(2) The trustee is liable to the beneficiary for an act of such an agent which if done by the trustee, would constitute a breach of trust, if the trustee

(a) directs or permits the act of the agent; or

(b) delegates to the agent the performance of acts which he was under a duty not to delegate; or

(c) does not use reasonable care in the selection or retention of the agent; or

(d) does not exercise proper supervision over the conduct of the agent; or

(e) approves or acquiesces in or conceals the act of the agent; or

(f) neglects to take proper steps to compel the agent to redress the wrong."

The facts in this case unmistakably bring Trustee Darrow within the category of a trustee who is at fault for permitting his key, confidential employees to gain profits which he himself would be forbidden to take, in at least the following respects:

1. He not only permitted the illegal acts of his employees but collaborated in such acts by purchasing securities from the employees at prices which resulted

in profits to the employees and losses to his trust estate.

2. The trustee did not use reasonable care in the retention of these employees because he knew at all times that his employees were engaged in the acts complained of.

3. The trustee did not exercise proper supervision over the conduct of his employees. Having full knowledge of their acts, it became his duty to require them to discontinue their illegal practices.

4. The trustee approved and acquiesced in the illegal acts of his employees.

5. The trustee failed to take any steps to compel these employees to redress the wrongs done by them.

The Court of Appeals, in reversing the surcharge of the District Court, stated that:

"In the brief filed on behalf of Darrow it is claimed that the appellee did not in the court below and could not in this court, present a single bankruptcy case which sustains the theory of the trial court in assessing the surcharges against him. Appellee on the other hand cited and discussed a number of such cases going as far back as the English bankruptcy case in 1794, *Ex Parte Belchier* (1 Amb. 217; 27 Eng. reprint 144)."

The Court of Appeals then cited and discussed, in addition to the *Belchier* case, *Speight v. Gaunt* (1883), 22 Ch. 727; *Evans v. Williams*, 276 F. 650; *In re Marcus*, 2 F. Supp. 524; *In re Portex Oil Co.*, 43 F. Supp. 859, D. C., D. Ore. 1942. In each of these cases the trustee there involved was held not liable to surcharge because the illegal acts of the agents or employees had been concealed from the trustee and he was powerless to prevent the derelictions there involved. Petitioners do not quarrel with these cases. However, Darrow falls in a completely different category. He exhibited supine negligence and, with full knowledge of his employees' repeated breaches of trust, permitted them to continue further to violate their obligations and aided and

abetted their wrongdoing by continued dealings with them. The above cases which protect a trustee who is not negligent cannot absolve a trustee such as Darrow who knowingly permitted acts of misconduct on the part of his confidential employees; and the principles of law which are governing here, and which impose liability upon Darrow, are the principles enunciated in *Scott on Trusts*, and in the *Restatement of the Law of Trusts*, cited *supra*, pp. 17-18.

The Court of Appeals also cites, in reversing the order of the District Court, the case of *In re Breger Kosher Sausage Co.*, 129 F. (2) 62. The decision in that case discloses that no attempt was there made to surcharge a trustee for profits made by his employees, as the Court of Appeals apparently erroneously assumes in its opinion in the instant case (R. 688). The decision in the *Breger* case actually held that upon the evidence presented to the Referee the record there was insufficient to charge the trustee for losses incurred in the operation of the bankrupt business or to sustain the charge that the trustee concealed an interest antagonistic to his trust for which he should be surcharged. The evidence did not sustain the charge of an antagonistic interest in the *Breger* case and there were no profits by employees involved in that case. The court in the *Breger* case therefore refused to reverse the findings of the Referee to the effect that the evidence presented did not sustain the charges of improper conduct.

The court stated in the *Breger* case that the "degree of diligence exercised, we think, is a matter for the bankruptcy court to determine." This quotation from the *Breger* case is applicable to the present case; the lack of diligence exhibited by Darrow indicated that he is remiss and should be surcharged for his dereliction.

The case most closely analogous on the facts to the instant case is *Carson, Pirie, Scott & Co. v. Turner*, 61 F. (2) 693 (C. C. A. 6, 1932). In that case an auctioneer employed by

a trustee in bankruptcy misapplied considerable merchandise over a period of time. The court there held that the compensation paid to the auctioneer should be disallowed in the trustee's account and that the trustee should be surcharged with the value of the goods taken by the auctioneer, so far as ascertainable, because the auctioneer's defalcations were made possible by the negligence of the trustee. In that case the court stated, at page 694:

"The proper administration of the bankrupt's estate in the interest of creditors required that the trustee exercise reasonable diligence in the performance of his duties. Had he done so, it is inconceivable that he would not have learned of the practices of Paul in appropriating to his own use much of the most valuable merchandise. When evidence of that circumstance was placed in his hands, he inexorably failed to act. In spite of this, the referee found that he had discharged his duties faithfully and approved his accounts, allowing the man who had misapplied a part of the assets a large fee for his services and allowing the trustee, who negligently failed to perform his duties, the maximum amount authorized under the acts relating to bankruptcy. We find nothing in the record to support the referee's finding that the trustee faithfully performed his duty, and we hold, as a matter of law, that the order approving his accounts based upon such finding is erroneous."

The opinion of the Court of Appeals indicates that that court believed it is necessary for the appellees (petitioners herein) to present a precedent on almost an identical set of facts in order to justify the surcharge order of the District Court. It is submitted that the *Carson, Pirie, Scott* case, which holds a trustee liable for improper acts of his agent which he could have prevented, is directly analogous and is applicable in the instant case. The instant case presents much more compelling reasons for surcharging the trustee than the *Carson, Pirie, Scott* case in that Darrow had full actual knowledge of his employees' wrong-

doing at all times but did nothing to prevent it. It should also be noted that the cases relied upon by the Court of Appeals and referred to in this brief, *supra*, p. 19, stressed the fact that the trustee did not have knowledge of the improper acts by his employees for which a surcharge was sought, and it is implicit in those cases that if the trustee had been aware of his employees' improprieties that a different situation would have been presented. Furthermore, the general principles of law which are clearly set forth in Scott on Trusts and in the Restatement of the Law of Trusts cited *supra*, pp. 17-18, fully support the surcharge order entered by the District Court upon the recommendation of the Special Master.

The situation in the instant case is comparable to that which is contemplated by Justice Learned Hand's comment in the case of *Berner v. Equitable Office Bldg. Corporation*, 175 F. (2) 218, 221 (C. A. 2, 1949) as follows:

"Be that as it may, in the case of ordinary trusts, not only may the trustee not buy in the property for himself, but he may not allow a third person to purchase at a price lower than concealed facts will justify, and he is accountable if he does."

Justice Hand cites in support of the above statement, Scott on Trusts and the Restatement of Trusts.

It is significant that respondent Darrow at no time has cited any case or authority which authorizes a trustee to permit his employee knowingly to traffic in securities of his trust or to violate breaches of fiduciary duty. The Court of Appeals did not demand precedent of Darrow in support of Darrow's position despite the general principle of law which places on the fiduciary the onus of justifying the propriety of his activity and his accounts. A trustee is always held to the highest standard of fidelity and the burden should rest upon him to establish clearly that he has done so. Cf. *Berner v. Equitable Office Bldg.*

Corporation, 175 F. (2) 218 (C. A. 2, 1949). A court of equity and bankruptcy has adequate inherent power to protect the integrity of proceedings before it by appropriate remedy. It is imperative in view of the decision of the court of appeals below that this court make it clear that a trustee does not fulfil his obligations to his court and to his trust if he knowingly permits his key employees to trade in securities of his trust and to profit therefrom.

The Court of Appeals in the instant case has departed from those general principles governing the obligations and responsibilities of the fiduciary which have been laid down in various situations by this court in cases such as *Taylor v. Standard Gas & Electric Co.*, 306 U. S. 307; *Pepper v. Litton*, 308 U. S. 295; *American United Mutual Life Ins. Co. v. Avon Park*, 311 U. S. 138; and *Woods v. City National Bank*, 312 U. S. 262. The District Court in the case of *In re Los Angeles Lumber Products Co.*, 46 F. Supp. 77 follows the principles laid down by this Court in the above cases, stating at page 91:

"All of these supreme court cases held fiduciaries to strict standard of conduct including officers, directors, controlling stockholders of corporations, bondholders' committees, etc., and make it clear that the equitable powers of a bankruptcy court are sufficient to provide an appropriate remedy for violation of these standards."

As this Court has pointed out in *American United Mutual Life Insurance Company v. Avon Park*, 311 U. S. 138, 146:

"Where investigation . . . discloses the existence of unfair dealing, a breach of fiduciary obligations, profiting from a trust, special benefits for the reorganizers, or the need for protection of investors against the inside few, or of one class of investors from the encroachments of another, the court has inherent power . . . to adjust the remedy to meet the

need. * * * That power is ample for the exigencies of varying situations. It is not dependent upon express statutory provisions. It inheres in the jurisdiction of a court of bankruptcy."

Under the facts of this case it was entirely appropriate to surcharge the trustee for the profits made by his key employees in their dealings in securities of the trust because these prohibited transactions on the part of these employees were countenanced and condoned by him and the trustee thereby violated his obligations of stewardship to his estate. All of the profits made by the employees were prohibited gains whether they were made directly at the expense of the trust through sales made to the trust or by virtue of usurpation of opportunities which the trust might otherwise have had or whether by the use of confidential information obtained in connection with duties performed as employees of the trust. In any of such events such profits were improper and it was an appropriate measure of the liability imposed upon the trustee to surcharge him for the profits which he permitted his key employees to make. It is the trustee to whom the Court is entitled to look for assurance that breaches of fiduciary duty and benefits from conflicting interests shall not be tolerated.

The Court of Appeals in its opinion stressed the fact that the bonds purchased by Darrow from his employees subsequently increased in value. The question of whether or not a trustee has violated his fiduciary duties is to be determined, and measured, by his conduct at the time of the alleged breach of duty. The fact that securities purchased by the trust in connection with improper transactions subsequently increased in value (which increase in value was attributable to general economic conditions and general enhancement in the values of real estate securities) cannot absolve the trustee, retrospectively, from liability

for his earlier failures to carry out his fiduciary responsibilities and to prevent his employees from violating their fiduciary duties. Subsequent enhancement is no defense to a surcharge, because if the trustee's acts were unlawful "it makes no difference that the estate was not the loser in the transaction." *Magruder v. Drury*, 235 U. S. 106. The trust was entitled to buy the bonds at the lowest price available which was the price paid by Kulp, Johnson or Colonial without adding any profit to them.

Even if the estate had suffered no loss in the transactions involved, which the Special Master found was not the case (R. 554), that fact would still not insulate from liability a trustee who had been derelict in his fiduciary duty. This principle is clearly pointed out in the case of *Magruder v. Drury*, 235 U. S. 106. The Court held in the *Magruder* case that the trustee was responsible to the estate for brokerage profits which his brokerage firm had made, without regard to the fact that like brokerage commissions would have been paid to any other brokerage firm which handled the transaction. The Court there indicated that it made no difference whether or not the estate was a loser by the method in which the transaction was consummated; the transaction by the fiduciary was forbidden without regard to gain or loss and a surcharge measured by such profits was an appropriate measure of liability.

The opinion of the Court of Appeals states that the activities of Darrow in the acquisition of the securities of Federal and National and their subsidiaries resulted in substantial benefits to the estates (R. 685). This fact, even if it were true, would not be determinative of the issue of dereliction of duty. Moreover, the bulk of the securities purchased by the trustee or retired during his administration, as referred to in the opinion of the Court of Appeals (R. 680-81), were purchased through sinking funds created by the subsidiaries pursuant to plans of reorganizations.

Even if the estate had sustained profits which might be ascribed to Darrow or his employees, such fact would not furnish a defense to the consequences of Darrow's supine negligence in permitting Kulp and Miss Johnson to engage in transactions in securities associated with their trust at profit to themselves. It should also be noted, in speaking of alleged benefit to the estate, that trustee Darrow countenanced the acquisition by Kulp and Miss Johnson of substantial amounts of securities of National and Federal through the sale in *Seligman v. Kulp*, and that the attempt of these employees to acquire these securities may involve control of both Federal and National and may result in great detriment to the holders of securities whom Darrow was bound to protect.

Statements of the reasons for the prohibition of dealings by fiduciaries with their beneficiaries or their trusts are found in many situations involving liability of such fiduciaries for proscribed dealings; even though the factual situations in such cases are not on all fours with the present case the general statements of law with respect to fiduciary liability are applicable here as well as in the cases where they are stated. In the case of *Winger v. Chicago City Bank & Trust Co.*, 394 Ill. 94 (1946) the Supreme Court of Illinois in setting aside a transaction between corporate directors and their corporations said, page 114:

"In case of constructive fraud by the officers of a corporation, where they deal for themselves and at the same time act for the corporation, it is immaterial whether the contract is fair or unfair, or whether there is good or bad faith, and it may be set aside because of the relationship of the parties."

The Illinois court also makes an extensive review of English and American cases enunciating the inexorable rule that a trustee may not deal with his trust regardless

of the terms of the dealing, quoting, among others, the excellent statement of Lord Cranworth in *Hughes v. Watson*, Scotland (1846) to the effect that:

"It may sometimes happen that the terms in which the trustee has dealt, or attempted to deal, with the estate or interests of those for whom he is trustee, may have been as good as could have been obtained from any other person—they may even at the time have been better; but still so inflexible is the rule that no inquiry on the subject is permitted."

The general principles of trust law, applicable also to the instant situation with respect to the immateriality of whether or not the estate suffered a loss, are also set forth in the case of *Pelcak v. Bartos*, 328 Ill. App. 435, in which the Court surcharged a trustee of a charitable society for the commissions, as a licensed bond dealer, which he had secretly obtained, stating that:

"But even if it be assumed, as Cipra contends, that there was no increase in cost, that the society did not overpay for these securities and that it suffered no loss or injury, nevertheless, by reason of his fiduciary relationship and trust, he would still be accountable to the society for any secret personal profit made by him"

Similarly, in the case of *White v. Sherman*, 168 Ill. 589 (1897) the Court stated the reason for this general rule as follows:

"The law does not allow a trustee to retain any personal gain, which he may obtain in such a manner as subjects him to the temptation of placing himself in a position which may be hostile to the interests of the estate, whether the estate is actually injured or not as a matter of fact. The fact, that he was receiving commissions might have subjected him to a temptation to place a larger line of insurance than was necessary on the trust property. It is not essential that the estate has suffered a loss from what he has

done; it is sufficient that he has gained a profit. Whether the contract was beneficial or injurious to the estate is wholly immaterial."

Since Trustee Darrow in the instant case permitted his key employees, who were themselves fiduciaries, to make proscribed profits which he as a trustee should have prevented them from making with full knowledge of all of the pertinent facts, he is himself chargeable with the consequences of his own act in failing to take the proper actions incumbent upon him.

The decision of the Court below also stresses the fact that the securities which Darrow purchased from Miss Johnson or Colonial were purchased at "market." In the light of the cases just cited, this fact in itself would be immaterial. It should also be noted that the so-called market of these securities was an extremely artificial one because of the restricted extent of such market, because the so-called market price was fixed by Darrow and Miss Johnson (R. 211), and because Colonial played a central rôle in the so-called market (R. 160-1).

The Court of Appeals in its opinion (R. 685) indicates that it considers that Darrow acted as an ordinary prudent man. A trustee cannot traffic in the assets of his trust for his own gain nor can his employees do so. Consequently a trustee cannot be said to exercise the care of an ordinary prudent man in knowingly permitting his confidential employees to carry on transactions which both he and his employees are forbidden to do and in aiding and abetting them in their improper transactions.

CONCLUSION.

In conclusion, we respectfully submit that the Court of Appeals has in effect held by its decision in this case that a court of equity and bankruptcy is without the power to deal with its own appointed trustee who not only permitted and assisted his key confidential employees, who were themselves fiduciaries, in violating their fiduciary duties to him and the estate. Such a decision imposes a novel and unwarranted limitation upon the inherent powers of a court of equity and bankruptcy in safeguarding a trust estate. Furthermore, such a decision fails to recognize the "uncompromising rigidity" which has heretofore been the "attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions." *Meinhard v. Salmon*, 249 N. Y. 458.

The decision of the Court of Appeals, if permitted to stand, will deprive a court of equity and bankruptcy of the normal, and the only effective, sanction against the pernicious practice of permitting confidential employees of a trustee to profit by dealing in the securities of the trust. The decision of the Court of Appeals, if permitted to stand, will undermine the high standards of ethics and the inexorable rules of unswerving devotion which have heretofore governed the conduct of fiduciaries in the administration of trusts and reorganizations. The decision of the Court of Appeals, if permitted to stand, will permit a trustee knowingly to allow his key employees to take improper and gainful advantage of their confidential fiduciary positions and would absolve such a delinquent trustee, to whom courts and beneficiaries are entitled to look for active stewardship and ultimate responsibility, from the blame and liability which such a trustee should bear.

It is therefore respectfully submitted that this Court should reverse the decision of the Court of Appeals for the Seventh Circuit in this case and sustain the surcharge imposed by the District Court.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1950.

No. 461

In the Matter of

**FEDERAL FACILITIES REALTY TRUST, a Common
Law Trust, and NATIONAL REALTY TRUST, a Com-
mon Law Trust,**

Debtors,

**STACY C. MOSSER, Successor Trustee of National
Realty Trust and Federal Facilities Realty Trust and
JOHN W. GUILD, Indenture-Trustee, etc.,**

Petitioners,

vs.

**PAUL E. DARROW, Former Trustee of National Realty
Trust and Federal Facilities Realty Trust,**

Respondent.

**ANSWER AND BRIEF OF RESPONDENT DARROW
TO—**

- I. MOTION AND BRIEF OF WHISTON AND
SCHWARTZ AS SUCCESSOR TRUSTEES.**
- II. BRIEF OF SECURITIES AND EXCHANGE
COMMISSION.**
- III. REPLY BRIEF OF GUILD AS INDENTURE
TRUSTEE.**

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IN THE
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OCTOBER TERM, A. D. 1950.

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FEDERAL FACILITIES REALTY TRUST, a Common
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JOHN W. GUILD, Indenture-Trustee, etc.,

Petitioners,

vs.

PAUL E. DARROW, Former Trustee of National Realty
Trust and Federal Facilities Realty Trust,

Respondent.

**ANSWER AND BRIEF OF RESPONDENT DARROW
TO—**

- I. MOTION AND BRIEF OF WHISTON AND
SCHWARTZ AS SUCCESSOR TRUSTEES.**
 - II. BRIEF OF SECURITIES AND EXCHANGE
COMMISSION.**
 - III. REPLY BRIEF OF GUILD AS INDENTURE
TRUSTEE.**
-

PRELIMINARY NOTE.

The Briefs of all opposing parties filed in this Court have admitted by silence the truth and accuracy of the "STATEMENT OF THE CASE" in Darrow's Main Brief (pp. 1 to 5). It is there pointed out that the surcharge of \$43,447.46, with which the District Court had penalized Darrow, was set aside by the Court of Appeals, largely for the reason that the conduct of Darrow's employees, on account of which that surcharge was made by the District Court, *had resulted in no loss whatever* to either of the Bankrupt Estates; but on the contrary those very transactions of Darrow's employees had actually *resulted in very large benefits and profits* to both of the Estates. A quotation from the finding of the Court of Appeals on the point is set out in Darrow's Main Brief (p. 5). Nothing is said in any of the opposing Briefs filed in this Court disputing or denying that such benefit accrued to the Bankrupt Estates or challenging in any way the finding of the Court of Appeals in that respect. Accordingly we say the Court of Appeals reversed the District Court because of the utter injustice of the penalty assessed against Darrow.

I. ANSWER TO MOTION OF WHISTON AND SCHWARTZ TO BE SUBSTITUED AS PETITIONERS, AND REPLY TO THEIR BRIEF.

The Motion of Whiston and Schwartz "that they be substituted in this case for Stacy C. Mosser as Trustee" (Br. p. 2) should be denied.

Lack of Action by Whiston and Schwartz.

As we pointed out in our Main Brief (p. 7), Mosser ceased to be Trustee of National two months before his Petition for Certiorari was filed in this Court, and he ceased to be Trustee of Federal 18 days before that Petition was filed here. Both Whiston and Schwartz became Successor Trustees in Federal and National respectively as long ago as November 7, 1949—long before the Court of Appeals reversed the surcharge judgment against Darrow on August 14, 1950. We b [REDACTED] in our Main Brief (Appx. A viii) that on October 26, 1950 the District Court entered an order authorizing Whiston, as the sole Trustee of National (Mosser being already out as Trustee for that Estate), and authorizing Schwartz and Mosser, as Trustees of Federal (Mosser at that time still being a Trustee of Federal, jointly with Schwartz), "to file a Petition for Certiorari in the Supreme Court" in this case. It is significant that the District Court at the time of the entry of the order recognized the fact that Mosser had no right to file a Petition on behalf of National because it did not authorize him to do so. Later, and eighteen days before the Petition for Certiorari was filed, Mosser had also ceased to be Trustee of Federal.

Whiston and Schwartz were the lawfully appointed Successor Trustees when the Court of Appeals reversed the surcharge judgment against Darrow on August 14, 1950 and must be held to have full notice thereof. Moreover each of them was personally ordered and directed by the District Court to proceed to file a Certiorari proceeding almost two full months before the Petition was filed in this case on December 20, 1950. The conclusive result of the foregoing facts is that *both Whiston and Schwartz were derelict of their duties in not filing the Petition for Cer-*

tiorari in this case in their own names as authorized by the District Court. The Motion of Whiston and Schwartz here presented cannot give any vitality whatever to the utterly lifeless and nugatory Petition which was attempted to be filed by Mosser long after he ceased to have any right to do so.

Two Separate Estates—Not Consolidated Here.

In our discussion of the motion of Whiston and Schwartz attention should be called to the opening statement of their "Argument" (Br. p. 7) incorrectly but subtly suggesting that this is a "consolidated case" in this Court, and that accordingly a single Petition for Certiorari could properly be filed here by Mosser for both the Federal and National Estates, even though those proceedings were entirely separate Bankruptcy cases. It is for this Court to determine how serious is the jurisdictional defect produced by the failure of Whiston and Schwartz to secure a consolidating Order from the District Court authorizing those two separate cases to be consolidated for hearing in this Court. In that connection we point out that in the Reply Brief of Guild (p. 3) he also attempts to say, *entirely incorrectly*, that these two Bankruptcy cases are "now being brought to this Court as a consolidated case." There is no order of any Court authorizing a consolidation of the two Bankruptcy Estates in this Court.

We point out also (as admitted by the Guild Reply Brief (p. 2)) that by a special Order of the District Court, at the beginning of these Surcharge Proceedings, these two cases of National and Federal "were consolidated *in that Court only*, for the purpose of hearing the objections filed" to Darrow's accounts as Bankruptcy Trustee in these Estates. We also point out that Darrow (Rec. p. 593) was careful

to secure a special Consolidation Order in the District Court consolidating the two cases "for purposes of review and appeal therein *to the United States Court of Appeals.*" It seems clear that the force and effect of those two Consolidation Orders in the District Court became *functus officio* with the determination of the proceedings in those two Courts.

It is a matter of substance, so far as the Respondent Darrow is concerned, whether there should be a single consolidated Petition for Certiorari in this Court or whether in each of the separate Bankruptcy Estates there should be separate Petitions for Certiorari, *which this Court might permit to be consolidated.* We suggest that a joint Petition for Certiorari has not been properly or validly filed in this Court.

The Bankruptcy Statute Concerning Death or Removal of Trustees.

In their brief Whiston and Schwartz (pp. 8 to 11) first attempt to rely on the provision of the Bankruptcy Act (Title 11, Bankruptcy, U.S.C. Sec. 74) concerning "death or removal" of a Trustee in Bankruptcy. We call the Court's attention to the language of that Statute to the effect that "the death or removal of a Receiver or Trustee shall not *abate* any suit or proceeding *which he is prosecuting or defending at the time of his death or removal.*" (Italics added.)

If either Whiston or Schwartz had been "prosecuting" this Petition for Certiorari and either or both of them had then died or been removed, that Statute might be applicable here. Indeed if Mosser had been "prosecuting" this Petition before he ceased to be Trustee, then again that Statute might be applicable. But under the facts recited showing conclusively that Mosser *was utterly out of both*

Estates and that neither Whiston nor Schwartz attempted to file a Petition or Petitions here, we say that Statute is totally without aid or comfort to Whiston and Schwartz on their Motion.

Accordingly we submit that the cases cited by Whiston and Schwartz in support of their contention under that Statute (Br. pp. 10 to 12) are totally inapplicable here. Nevertheless we propose to discuss some of those cases later.

Rule 19(4) of This Court Concerning Substitution of Public Officers.

Whiston and Schwartz in their Brief (pp. 12 to 15) next attempt to rely on Rule 19(4) of this Court concerning substitution of "a public officer, by or against whom a suit it brought." That Brief rightly connects up that rule with Rule 25(d) of the Rules of Civil Procedure concerning substitution:

"when an officer of the United States . . . is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office."

Here again we say that neither the cited Rule of this Court nor the cited Rule of the Rules of Civil Procedure concerning substitution gives any support to the Motion for Substitution. Both of those Rules are expressly concerned with a situation where a public officer of the United States *per se* (not a mere Bankruptcy Trustee) shall either die or cease to hold office "while the suit is pending" (Rule 19(4)), or "is a party to an action and during its pendency dies, resigns or otherwise ceases to hold office" (Rule 25(d)). Neither Whiston nor Schwartz in any way come within the purview of these two Rules—even though they should be considered public officers of the United States, in the sense of those Rules, which they are not.

Two Controlling Cases Against Whiston and Schwartz.

The precise question involved in the Motion for Substitution has been passed upon, directly adversely to them, by two controlling cases in this Court. In the case of *Davis v. Preston*, 208 U. S. 406, a judgment had been recovered in the Texas courts against Davis as Director General of Railroads and that judgment was affirmed by the highest court in Texas. Davis then filed a Petition for Certiorari in this court within the 90-day period allowed by law, and the Petition was granted. It was later discovered that when Davis filed his Petition, he had ceased to be Director General of Railroads and had been succeeded by Andrew W. Mellon. Mellon filed a Motion in this Court asking to be substituted for Davis, just as Whiston and Schwartz have done here. The Motion for Substitution was denied and the Certiorari proceeding was dismissed. In dismissing the Petition the Court said:

"It now appears that when the Petition was presented Davis had ceased to be Federal Agent and had been succeeded in that office by Andrew W. Mellon Therefore Davis was not then in a position to complain of the judgment or to invoke a review of it by this Court. All right and discretion to do so had passed to his successor in office.

"It follows that the Writ of Certiorari, granted on the Petition for Davis, was improvidently allowed and must be dismissed."

It is to be particularly noted in denying Mellon's Motion for Substitution the Court also said:

"The succession in office as now appears occurred before there was any effort to obtain a review in this Court. After the succession Davis was completely separated from the office and without right to invoke such a review or exercise any authority or discretion in that regard. Therefore his Petition must be disregarded. The time within which such a review may be

invoked is limited by statute and that time has long since expired. To grant the Motion in these circumstances would be to put aside the statutory limitation * * *."

It should be pointed out here that the status of a Director General of Railroads during World War I—having to do almost entirely with the private property of the Railroads and the claims of employees, etc.—made that functionary a "public officer" only in a limited sense. He could not fairly be called a public officer in the sense of one whose responsibility is predominantly to the public rather than to private interests. It is obvious that a Bankruptcy Trustee has a similar and almost identical status as that of the Director General of Railroads in the *Davis* case—he is a court officer it is true—but he is concerned predominantly with the private property of which he has title and over which he has complete control. Accordingly we say that both in logic and in law the rule of the *Davis v. Preston* case must be applied to Bankruptcy Trustees and is controlling here against Whiston and Schwartz.

Another leading and controlling case which is squarely against the Motion of Whiston and Schwartz is *Snyder v. Buck*, 340 U. S. 15, decided in November, 1950. In that case this Court dismissed a Writ of Certiorari in a proceeding brought by a widow of a member of the United States Navy to compel the paymaster of the Navy to pay her a widow's allowance. She had recovered judgment in the District Court on January 30, 1948. On March 18, 1948, the Government in the name of Buck as paymaster for the Navy filed a Notice of Appeal to the Court of Appeals. During the pendency of that Appeal and on March 1, 1948, Buck retired from his office and was succeeded by another. Under those circumstances the reviewing court (C.C.A.D.C.) 179 F. (2d) 466 held that the action had

abated and ordered the suit to be dismissed. On Certiorari this Court affirmed that judgment particularly relying upon *Davis v. Preston*. This Court in *Snyder v. Buck* specifically held that under the circumstances and the facts of the case:

"The absence of a necessary party and the statutory barrier to substitution go to jurisdiction."

Therefore we find this Court only a few weeks ago holding, under circumstances closely similar to the procedural facts in the case a Bar that (even in the case of a "public officer" in the strict sense) the "absence of a necessary party" was jurisdictional and required the case to be dismissed. We respectfully say that the *Snyder v. Buck* case and the *Davis v. Preston* case both require the denial of the Whiston and Schwartz Motion for Substitution.

The Cases Cited by Whiston and Schwartz.

Among the cases strongly relied upon by Whiston and Schwartz (their Brief pp. 13-14) are four World War II Price Administrator cases: *Fleming v. Goodwin*, C.C.A.8, 1948, 165 F. (2d) 334, cert. denied 334 U. S. 828; *United States v. Koike*, 164 F. (2d) 155, C.C.A. 9th (1947); *Porter v. Maule*, 160 Fed. (2d) 1 C.C.A. 5, (1947); *U. S. v. Seigel*, 168 F. (2d) 143 C.A.D.C. (1948). It is at once obvious that the Price Administrator of the United States is a public officer in the strict sense, dealing solely with public interests. In those four Price Administrator cases Administrator Bowles had been succeeded in office by another while each case was pending. In such pending cases his successor, as a Government official, was entitled to be substituted not only by virtue of law but by virtue of common sense. There is no analogy between the public government office of Price Administrator and a Bankruptcy Trustee.

Whiston and Schwartz (Br. p. 12) cite without any discussion eight cases and authorities as follows: *Bragg v.*

Gerstel, 148 F. (2d) 757, 758, C.C.A. 5th (1945); *Fox v. McGrath*, 152 F. (2d) 616, 618 C.A. 2d (1945); *Commercial Credit Co. v. County of Northumberland*, 23 F. Supp. 747 D.C.M.D. Pa. (1938); *Bowers v. American Surety Co.*, 30 F. (2d) 244 C.C.A. 2d (1929); *Sumpter Lumber Co. v. Sound Timber Co.* 257 Fed. 408 C.C.A. 9th (1919); *F. A. Mfg. Co., Inc., v. Hayden & Clemens, Inc.*, 273 Fed. 374 C.C.A. 1st (1921); 1 American Jurisprudence 49; Cyclo-
 pedia of Federal Procedure, 2d Ed., Vol. 6, p. 117. We consider it unfair and indeed improper for Counsel to attempt to cast the burden upon opposing Counsel and upon the Court of reading and digesting cases merely cited in that fashion, and we will, therefore, also pass over those cases without discussion.

Whiston and Schwartz in their Brief do discuss a number of cases, none of which support their Motion. In the first of these, *Adams v. Johnson*, 107 U. S. 251, decided by this Court in 1883, the question of substitution was accorded little or no importance and was glossed over in the opinion. In any event, that case is squarely overruled by *Davis v. Preston* above cited.

The next case, *Gates v. Goodloe*, 101 U. S. 612, decided in 1880, is of no significance here. There a judgment had been recovered against a partnership consisting of three members. Thereafter two members of the partnership were adjudicated bankrupt. The third member filed a petition for Writ of Error in this Court in the names of all three partners for a review of the judgment. It was urged on Motion to Dismiss that the Order of adjudication against the two partners barred the Writ. This Court held that the partner who had not been adjudicated a bankrupt could prosecute the application for Writ of Error even if he used the names of all three parties. Obviously that case does not support the Motion for Substitution here.

In *Myers, et al. v. Canton National Bank*, 109 F. (2d) 31, there was involved an appeal from a judgment dismissing a complaint in which money damages were sought to be recovered from a bank and its receiver. An appeal was taken by the plaintiff to the Court of Appeals in which the bank and the receiver were named as appellees. It appears that prior to the time a Motion was made in the Trial Court to dismiss the complaint the original receiver had been succeeded by another and it was the successor receiver who joined in the Motion to Dismiss the complaint. However, when the appeal was prayed, as stated above, it was the original receiver who was named as Appellee along with the bank. The bank moved to dismiss the appeal on the ground that the successor receiver was an indispensable party. The Motion to Dismiss was denied and, in doing so, the Court held it was not necessary to determine whether the successor receiver was an indispensable or merely a proper party.

The cases of *Vass v. Conron Brothers Co.*, 59 Fed. (2d) 969 and *In re Morris White Holding Company*, 52 Fed. (2d) 499, both hold, as stated in the Whiston and Mosser Brief, that a Trustee in Bankruptcy is an "officer" of the Court which appoints him. With this statement we are in entire agreement. The case of *Vass v. Conron* involved the question of the right to sue a Trustee in Bankruptcy on his obligations as such in a State Court. It was held that his liability was as much a part of the usual administration in Bankruptcy as that of the pay of his employees and that an action against a Trustee, as such, must be brought in the Bankruptcy Court. The *Morris White Holding Company* case involved a question whether a Bankruptcy Court would permit foreclosure of a lien and the Court held that filing a petition for leave to bring a foreclosure suit against a Bankruptcy Trustee amounted to a submission of the controversy to the Bankruptcy Court's jurisdiction.

It is obvious that neither case lends any support to the Motion for Substitution here.

In *Callaghan v. R.F.C.*, 297 U. S. 464, there was involved only a question of trustee's fees. The Court held that bankruptcy trustees are officers of the Court and, like public officers generally, they must show "clear warrant of law" before compensation will be owing to them.

The case of *In re Prindible*, 115 F. (2d) 21 (1940), is not pertinent here because it merely held that Bankruptcy Trustees are "public officers" in the limited sense indicated in the *Callaghan v. R.F.C.* case *ante*.

The two cases of *Pufahl v. Est. of Parks*, 229 U. S. 217, 225 (1936) and *U. S. v. Weitzel*, 246 U. S. 533, 541 are cited for the doctrine that a receiver of a National Bank appointed by the Controller of the Currency are "officers of the United States." It is at once obvious that there is no comparison between a Bankruptcy Trustee who reports to the Court and represents creditors and a Receiver of a National Bank, because the latter "pays to the Treasurer of the United States money collected and makes to the Controller reports of his acts and proceedings." See the *Weitzel* case.

Darrow's Objections Jurisdictional—Not "Technical."

In the Whiston and Schwartz Brief (p. 16) it is stated that:

"It is significant to note that the respondent Darrow's brief is directed primarily to technical questions of parties. Respondent's brief does not make a substantial effort to reply to the substantive questions raised by the petition for certiorari."

We resent and deny that assertion, and refer to our Main Brief on "The Lack of Merits", etc. (pp. 13 to 18). This Court has held in the *Davis v. Preston* case *ante* and also

in the recent *Snyder v. Buck* case *ante* that where a public agent has resigned his post or otherwise has ceased to have any authority whatever with reference to his former position, his action in filing a Petition for Certiorari in this Court is an utter nullity. The Court in those two cases further held that a Motion for Substitution, by a Successor in the post of the resigning official, lacks jurisdictional authority and will be dismissed by this Court. We, therefore, say that in addition to Darrow's objections to the Petition for Certiorari on the merits, his objections to the Petition and the Motion for Leave to Substitute, etc., are substantial and jurisdictional, and are not "technical" in any sense.

II. REPLY TO BRIEF OF SECURITIES AND EXCHANGE COMMISSION.

The Biased and Slanted "Statement" of the S.E.C.

More than one-half of the S.E.C. Brief (pp. 2 to 11) is taken up with what we consider a biased and slanted "statement" of what that Agency would like this Court to believe are the controlling facts here. That "Statement" is principally an effort to paint the two part-time employees of the Respondent Darrow as Trustee, in the worst possible light. We do not propose to reargue the fact for the purpose of rebutting this *factual* Argument of the S.E.C.—although that could readily be done. We again call the Court's attention to the "*Statement of the Case*" in Darrow's Main Brief (pp. 1 to 5)—not a single item or word of which is disputed or contested by the S.E.C. *factual* Argument. As to the ultimate facts we think this Court will prefer to rely on the full and fair statement of the facts found in the Opinion of the Court of Appeals.

The S.E.C. the Real Instigator of This Petition.

In Respondent Darrow's Main Brief (Appx. B, pp. x to xii) there are set out certain portions of the official Transcript of Record of the proceedings before the District Court on October 26, 1950, when that Court authorized its Trustees Whiston and Schwartz (and Mosser who shortly thereafter resigned) to file Certiorari proceedings in this Court on behalf of both Federal and National.¹ That Transcript of Proceedings (p. 1) shows the appearances of Counsel on behalf of Whiston and Schwartz and Mosser (who were the Petitioners for the Order in Question); and also shows that "Mr. Edward P. McGuire appeared on behalf of the S.E.C." Since the Bankruptcy Act, Title 11, Bankruptcy, U. S. C. A. 608, as we have seen, contains a mandatory prohibition to the effect that:

"The Commission may not appeal or file any Petition for appeal in any such proceeding,"

the S.E.C. was without any authority whatever to appear in the District Court in support of that Petition or to "prosecute" the Petition for Certiorari in this Court, as it is doing. We go further and say reluctantly that the portions of that Transcript set out below, clearly prove that the S.E.C., in complete violation of the statutory prohibition against appeals or petitions for appeal by that

¹ It should be particularly noted that this authorizing Order of the District Court of October 26, 1950, stated among other things that

"Frank M. Whiston as Successor Trustee of National Realty Trust and Joseph Schwartz and Stacy M. Mosser, Successor Trustees of Federal Facilities Realty Trust, be, and they are hereby, authorized to file Petition for Certiorari in the Supreme Court" etc.

As we have suggested in our Reply to the Whiston and Schwartz Brief, the proper thing for those two Trustees of separate Bankruptcy Estates to have done following the Order of October 26 (or indeed in that Order itself) was to have gotten a direct Order of the District Court consolidating these two Estates (which are totally separate cases in the District Court) for the purposes of this Certiorari proceeding.

Agency, is nevertheless the real instigator of this Petition for Certiorari, as shown by the following:²

"The Court: Do I understand that the Securities & Exchange Commission will join in this thing?

"Mr. McGuire: Yes, your Honor. We will file a supporting brief.

"The Court: You will file your brief incident to the trustees' brief?

"Mr. McGuire: Yes.

. . .

"The Court: Who from Washington is going to argue the case for certiorari? The SEC will have its solicitor?

"Mr. McGuire: The SEC will have its solicitor there.

"The Court: If the SEC is willing to undertake the laboring oar here I would be willing to approve the matter of the appeal. The only point that presents itself to me here is a different one than, of course, is presented to the SEC, Mr. McGuire. I am concerned now and must be conscientiously with the preservation of the assets of this estate. You are concerned with the state of the law in this circuit and should properly be so concerned. I am too in a general way, but in this case my duties are to this particular estate. Now to burden this estate with a tremendous cost in order to rectify the law of the circuit, if indeed it needs rectification—I do not for the record say that it does—but who am I to disagree with my better? At the same time that apparently is the opinion of your Commission?

"Mr. McGuire: That is right.

"The Court: Or you would not be joining in this appeal. Is it fair to the creditors of this estate for me to undertake so large a burden? I would be persuaded in granting this petition if I knew that the major portion of the work of the appeal, the legal work,

² Counsel for Respondent Darrow has filed in the office of the Clerk of this Court the full official certified copy of that Transcript of Proceedings.

the major portion of the legal work would be undertaken by the SEC and maybe the trustees had to file only more or less pro forma in order to comply with perfecting their certiorari. What do you have to say on that?

"Mr. McGuire: We are prepared to go all the way on this, your Honor, and be as diligent as we possibly can. As I say we will file a supporting brief and assume at least a portion (sic) and argue this matter.

• • •

"The Court: You represent further to the court, Mr. McGuire, the Securities & Exchange Commission will undertake a major portion of the work involved?

"Mr. McGuire: That is right.

"The Court: Your solicitor in Washington will argue the appeal?

"Mr. McGuire: That is right."

• • •

Respondent Darrow respectfully challenges any right or authority of the S.E.C. whatever to give the above assurances to the District Court that the Commission "would join in this appeal"; "that it would go all the way on this"; and "that it would undertake the laboring oar here," so far as this Petition and Appeal in this Court here is concerned. We respectfully urge that in view of the above quotations from the Record before the District Court and in view of the above cited clear statutory prohibition against the S.E.C. appealing in Bankruptcy reorganization that:

1. The S.E.C. is proceeding in direct violation of both the letter and the spirit of the mandatory prohibition of the Bankruptcy Statute above quoted.

2. The S.E.C., in spite of its utter lack of authority in the premises, is the real instigator and actual proponent of this purported Petition for Certiorari. The fact that the S.E.C. attempts to appear here through a Brief in the guise of *amicus curiae* does not alter the point that it is in truth the real instigator and the real prosecutor of this Petition.

3. The S.E.C. is seeking to have this Court take jurisdiction and pass upon a purely abstract and hypothetical question of law, contrary to the long established doctrine of this Court that it will not assume jurisdiction to decide such questions.

We submit that if the actions of the S.E.C. in this proceeding are permitted to go unchallenged, then the entire force and effect of the above statutory prohibition against Appeals by the S.E.C. in Bankruptcy proceedings will be circumvented and annulled. Moreover, unless the efforts of the S.E.C. are challenged here, this Court may unwittingly be led into considering and passing upon mere abstract propositions of law solely because the Commission desires that to be done.

The Effort to Make New Law.

As already urged in Darrow's Main Brief (pp. 14, *et seq.*) the sole purpose of the Petition for Certiorari here (on behalf of all parties including the S.E.C.) is merely an effort to make new law with respect to surcharging Bankruptcy Trustees. In our Argument before the Court of Appeals we challenged opposing Counsel, including Counsel for the S.E.C., to cite a single Bankruptcy case, either in America or England, in which the courts had adopted the Draconian doctrine with respect to surcharging Bankruptcy Trustees which the Commission and the purported Petitioners insist should be applied in this case. The Court of Appeals took note of our challenge in this respect and said in its Opinion:

"The Appellees have not met the challenge of the Appellants. The Brief filed on behalf of the Securities and Exchange Commission cites no case, which supports or even tends to support, the surcharges made against Darrow in the case at bar."

In spite of that rather critical language of the Court of Appeals the S.E.C. (as well as all the purported Petitioners) again fail to cite in this Court a single new or additional case supporting their contentions as to surcharging Darrow. A check of the opposing Briefs filed in this Court will show that every case there cited, in the effort to surcharge Darrow, was fully argued and discussed below.

No person can fairly object to forceful and vigorous action by the S.E.C. in Bankruptcy Reorganization proceedings within the purview of the statutory authority given that Commission, in the District Courts. But when the Commission without any authority whatever attempts to foment review proceedings by others for the sole purpose of establishing *new law*, as it is obviously doing here, we respectfully say that the Respondent Darrow is entitled to urge on this Court that such efforts and tactics should be brought to a halt. As matters now stand, after the decisive Opinion of the Court of Appeals, the S.E.C. appears as a principal party in an effort to surcharge Darrow without any authority of law and has forced upon him the heavy burden and expense of many years of litigation to relieve himself of a large surcharge and to clear his name in the community.

The Law as the S.E.C. Would Like It.

When the legal contentions of the S.E.C. in this whole proceeding are analyzed (as well as those of the other purported Petitioners) it is clear that all parties here are attempting to establish as new law the following proposition, namely:

That Darrow as a Bankruptcy Trustee should be penalized and surcharged for profits realized by his part-time employees as a result of their trading in the

securities of the subsidiaries of the two Bankruptcy Estates of which he was Trustee, notwithstanding the admitted facts that such transactions were all made at the open market prices; that Darrow did not personally participate in such profits directly or indirectly; and that no loss whatever resulted to either of the Bankruptcy Estates; but on the contrary, as found by the Court of Appeals, such transactions themselves resulted in large profits and benefits to both Estates. (See our Main Brief, pp. 4 and 5.)

We respectfully submit, in spite of all the subtle suggestions to the contrary³ that the above statement represents, fairly and fully, the application of the law concerning surcharging Bankruptcy Trustees as the S.E.C. would like to have it.

The S.E.C. Bankruptcy Cases Not Applicable Here.

In its Argument (Br., pp. 11 to 18) the S.E.C. cites a number of Bankruptcy cases some of which it discusses at some length. All of those cases, as we have said above, were fully argued by the Commission in the Court of Appeals and with respect to them that Court said the S.E.C. "cites no case which supports or even tends to support the surcharges made against Darrow." The plain fact is that all of the Bankruptcy cases cited by the S.E.C. here (as well as the other purported Petitioners) are so totally different on their facts from the *Darrow* case as to be entirely inapplicable. All of those cases where a surcharge was made, *involved actual losses suffered* by the creditors, due to the wrongful conduct of the Bankruptcy Trustees—something

³ The S.E.C. Brief (p. 2) attempts to set out what it calls the "Question Presented." We say that statement of the question is biased and colored since it omits entirely all reference to the fact of the complete lack of personal guilt or personal activities on behalf of Respondent Darrow and because it entirely omits any reference to the fact that the transactions of Darrow's employees, which are complained of here, actually resulted in very large benefits and profits to the Bankrupt Estates.

entirely absent in the *Darrow* case. All of those cases also involve *either personal profits or personal malfeasance* of the Trustee—again a factor that is entirely lacking in the case at bar. We have stressed this point about the utter inapplicability of the Bankruptcy cases cited by the S.E.C. here (as well as the other purported Petitioners) because any fair analysis of those cases establishes our contention about the effort here to make new law.

Cases of Equity Trusteeship Entirely Inapplicable Here.

It is a fundamental proposition in the Law of Bankruptcy that the rules concerning the liability of Bankruptcy Trustees, where surcharges are involved, are not at all the same as the rules concerning those matters where the liability of a Trustee in Equity is involved. Equity Trustees are either those (a) who have voluntarily undertaken to act in the Trust capacity or (b) those who are held Trustees *ex maleficio* by the Equity courts. A Bankruptcy Trustee on the other hand has a totally different capacity and has duties and responsibilities of a totally different character. The English Bankruptcy Court two centuries ago pointed out the distinction between Equity Trustees and Bankruptcy Trustees in the noted case of *Ex Parte Belchier*, 1 Amb. 218, 27 Full English Reprint 144, decided by Lord Hardwicke in 1754.* No cases or authorities need be cited here for the proposition that our American Bankruptcy courts have consistently followed the doctrine of the *Belchier* case.

* In that case Lord Hardwicke stated the applicable doctrine concerning the liability of Bankruptcy Trustees as distinguished from the liability of Trustees in Equity, when he said:

"If an Assignee (in Bankruptcy) is liable in this case no man in his senses would act as Assignee under the Commissioners in Bankruptcy. This court has laid down a rule with regard to the transactions of Assignees and more so of Trustees so as not to strike terror into mankind acting for the benefit of others and not for their own."

An Equity Case Strongly But Erroneously Relied Upon.

One of the principle cases relied upon by the S.E.C. here (Br., p. 15) and strongly relied on by the Petition for Certiorari (p. 23) is *Meinhard v. Salmon*, 249 N. Y. 456, 164 N. E. 545. When the New York case is analyzed it will be found that its facts and circumstances are as different from those in the *Darrow* case as day from night. The New York case involved a situation where two men were engaged as "joint adventurers" in a large real estate deal, and one of them charged his partner with defrauding him. The court on the facts quite properly held the defendant guilty, and held him liable as Trustee *ex maleficio* for the loss which he had thrown upon his partner, and for the profits which he had made at the expense of his partner. In laying down the doctrine of law applicable to the case the Court begins with the following language:

"Joint adventurers, like co-partners, owe to one another, while the enterprise continues, the duty of the finest loyalty."

Nevertheless it is this "joint adventurers" case, where the guilty party is surcharged as Trustee *ex maleficio*, that the S.E.C. Br., p. 15) seizes upon as fixing:

"The fiduciary standards by which a reorganization trustee's conduct must be measured."

A Purely Abstract and Hypothetical Case Here Presented.

We conclude our Reply to the S.E.C. Brief by again suggesting that the Commission is here engaged in a purely abstract and hypothetical effort to establish *new law* with

⁵ In the same way the Petition for Certiorari in this case (Br. p. 23) concludes its "Argument" by referring to this *Meinhard v. Salmon* case as establishing the doctrine concerning surcharging of Bankruptcy Trustees "which has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions" (*Meinhard v. Salmon*, 248 N. Y. 458)."

respect to surcharging Bankruptcy Trustees. This is true *first* because there has been no damage or injury whatever to the creditors or anybody else in these two Bankruptcy Estates because of the alleged misconduct of Darrow's part time employees, but on the contrary large benefits and profits resulted to the two Estates from those very transactions; *second*, because there is not even a semblance of authority in the Books upon which the S.E.C. (and the other purported Petitioners here) can rely in an effort to involve the jurisdiction of this court on review.

III. REPLY TO BRIEF OF GUILD AS SUCCESSOR INDENTURE TRUSTEE.

The Indenture Trustee Has No Real Interest Here.

An examination of the Petition for Certiorari, as well as an examination of the Reply Brief filed by John W. Guild as Successor Indenture Trustee, will show in convincing fashion that the Indenture Trustee has no real and substantial interest whatever in this Certiorari proceeding. If the "Reasons Relied on for Allowance of Writ" set out in the Petition (p. 6) are analyzed it will be found that they are all of them based on purely abstract contentions. Indeed the gist of this whole proceeding, so far as Guild is concerned, is stated in Reason No. 4 which reads as follows:

"4. The decision of the Court of Appeals, if permitted to stand, will result in a serious impact against, and a diminution of, the high standard of ethics, necessarily required in the important and ever-widening field of reorganization proceedings and fiduciary obligations."

Nowhere in either the Petition or in Guild's Reply Brief is there any allegation or even suggestion that the bondholders represented by Guild as Indenture Trustee have any financial interest whatever in urging this Certiorari proceeding on this Court.⁶

It is true that under the Bankruptcy Act (11 U.S.C. Bankruptcy Sec. 606) creditors in Reorganization Proceedings, including specifically Indenture Trustees, are given certain special rights with respect to being "heard on all matters." It is true also that the Courts have expanded that provision to grant Indenture Trustees the right to appear in Appeal Proceedings—*where the Indenture Trustee asks leave of the Reviewing Court, something that was not done here*. But we say that the right of an Indenture Trustee to Appeal must be based on some substantial financial interest and that any such interest is entirely lacking here.

Guild an Indenture Trustee in One Case Only Here.

As we have pointed out elsewhere in this Reply Brief there are two separate and distinct Bankruptcy Estates involved in this Petition for Certiorari. The two cases in the District Court are entirely separate there and carry

Utter Lack of Financial Interest Admitted.

The plain fact is that there is an utter lack of financial interest in the prosecution of this Certiorari proceeding on behalf of all of the purported Petitioners here, including Guild. During the Oral Argument before the Court of Appeals the Court itself asked the question of Darrow's Counsel whether any creditor was interested financially in the result of the surcharge against Darrow, and would suffer any loss if the surcharge finding were reversed. Darrow's Counsel replied, by repeating the point which had already been stated on Oral Argument, without refutation, that both Estates would pay out 100% for all creditors without this Darrow surcharge. The Court gave opposing Counsel full opportunity to deny that fact but it was openly admitted by silence. The fact of complete lack of any financial interest of any party to this Petition for Certiorari must also be admitted in this Court.

totally different case numbers in that court. While the two Bankrupt Trusts were both engaged in the same general business they were and still are separate entities; each with its own assets and each with its own separate creditors. Although the District Court had surcharged Darrow \$43,447.46 it had utterly failed to allocate the portion of such surcharge which would be distributed as profits to each of these two Bankrupt Estates. (See Darrow's Main Brief, pp. 2 and 3.) Guild as Indenture Trustee is interested only in the Federal Facilities Estate but he fails to point out that fact in his Reply Brief. Indeed he signed the Petition and his Reply Brief as "John W. Guild Indenture Trustee"—as if he were interested in both Estates.

CONCLUDING COMMENT.

The Respondent Darrow has no desire to rely on merely technical or unsubstantial grounds in opposing the Petition for Certiorari here presented. It is strongly urged, however, that the following points have been clearly established on the Record before this Court:

First. The original Petition here filed totally fails to meet the jurisdictional requirements of this Court in Certiorari proceedings and should be denied.

Second. The Motion of Whiston and Schwartz to be substituted herein in lieu of Mosser also utterly fails to meet the jurisdictional requirements of this Court and should be denied.

Third. Guild as Indenture Trustee fails entirely to show any substantial interest financially or otherwise in this proceeding and the Petition for Certiorari should be denied as to him.

Fourth. The Securities and Exchange Commission has attempted to put itself above the law, and in plain violation of the provisions of the Bankruptcy Act in

its effort to present a Brief as *amicus curiae* herein
and that Brief should be stricken.

Respectfully submitted,

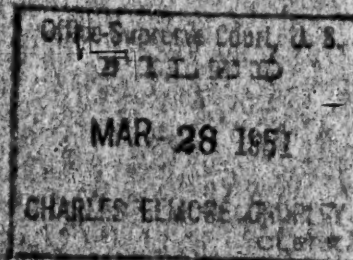
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Dated at Chicago February 15, 1951.

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No. 461

In the Supreme Court of the United States

OCTOBER TERM, 1950

**STACY O. MOSSER, SUCCESSOR TRUSTEE OF NA-
TIONAL REALTY TRUST AND FEDERAL FACILITIES
REALTY TRUST, AND JOHN W. GUILD, INDENTURE
TRUSTEE, ETC., PETITIONERS**

v.

**PAUL E. DABROW, FORMER TRUSTEE OF NATIONAL
REALTY TRUST AND FEDERAL FACILITIES REALTY
TRUST, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT**

BRIEF FOR SECURITIES AND EXCHANGE COMMISSION

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 461

STACY C. MOSSER, SUCCESSOR TRUSTEE OF NATIONAL REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST, AND JOHN W. GUILD, INDENTURE TRUSTEE, ETC., PETITIONERS

v.

PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR SECURITIES AND EXCHANGE COMMISSION

OPINIONS BELOW

The opinion of the Court of Appeals (R. 675-691) is reported in 184 F. 2d 1. The memorandum opinion of the District Court (R. 577-585) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on August 14, 1950 (R. 692). A petition for rehearing was denied by the Court of

Appeals on September 21, 1950 (R. 727). The petition for a writ of certiorari was granted on February 26, 1951. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

QUESTIONS PRESENTED

1. Where a reorganization trustee files a petition for a writ of certiorari in the name of his predecessor, who was the party of record in the court below, may this Court permit substitution and review the decision below on the merits?

2. Whether a reorganization trustee was properly surcharged for profits realized, with his knowledge and assistance, by his subordinates from trading in securities of the debtors' subsidiaries, particularly where the trustee was himself engaged in purchasing the same securities for the benefit of the estate and purchased some of them from these employees at a profit to them.

STATEMENT

The reorganization proceedings here involved were begun under former Section 77B of the Bankruptcy Act (48 Stat. 911) and subsequently made subject to various provisions of Chapter X, at which time the Commission became a statutory party pursuant to Section 208 (11 U. S. C. 608). The Commission supported the petition herein, and, although technically a statutory respondent, submits this brief in support of the petitioners. The petitioners are the successor reorganization

trustees and the indenture trustee for the collateral trust bonds of one of the debtors.

The debtors, Federal Facilities Realty Trust ("Federal") and National Realty Trust ("National"), are common law trusts (R. 577) which were organized by Jacob Kulp and Myrtle Johnson in 1929 and 1930, respectively, as real estate holding companies to control and to operate 27 companies, each of which owned a parcel of real estate with a building thereon. Although Kulp retained large blocks of securities, substantial amounts of the securities of both debtors are publicly held.¹

The subsidiary companies had been promoted principally by Kulp and Myrtle Johnson (R. 578-579). Land acquisitions and the construction of the buildings had been financed through the public sale of bonds of these companies, while the capital stock was retained by Kulp and members of his family. Subsequently, when the value of the real estate properties declined and the maturities of several bond issues were imminent, the debtors were organized to acquire the equity in

¹ The capital structure of Federal consists of \$558,300 in principal amount of collateral trust bonds, of which \$84,000 have been reacquired by Federal, and 100,000 units of beneficial interest. Of these securities, \$188,200 in principal amount of bonds and 37,642 units of beneficial interest are publicly held. National has no funded debt. Its outstanding securities consist solely of 46,636.1 units of beneficial interest, of which 25,874.5 units are held by the public (R. 518, 578, 582, 584)

these companies and the bondholders were offered securities of the debtors for their bonds in the subsidiary companies (R. 578-579, 681). While some exchanges were made, the outstanding bonds of the subsidiaries were not reduced in sufficient amounts to avoid eventual defaults and the consequent proceedings for the reorganization of the underlying companies as well as of Federal and National.

Kulp, his son, and Myrtle Johnson, were the original common-law trustees of the debtors. In 1933 they resigned following an investigation by the United States Department of Justice. At the time of his resignation, Kulp transferred to George Andresen, one of the successor common-law trustees, under a separate trust agreement, all his holdings in the top trusts and their subsidiaries for the benefit of those who had been previously induced to exchange bonds of the latter for securities of the trusts (R. 154, 517, 578). These securities were subsequently sold at a judicial sale referred to below.

Paul E. Darrow was appointed reorganization trustee of Federal and National in 1935, and, until his resignation on August 10, 1943, he conducted the business of the debtors and managed the 27 subsidiary building companies. As manager of the debtors and the underlying properties, Darrow engaged in the purchase of bonds of the subsidiary companies at a discount for retire-

ment (R. 513). During his administration, as the court below noted (R. 680-681; 184 F. 2d 1, 4-5), bonds of the subsidiaries were reduced from \$7,611,700 to \$5,197,100 face amount. Economy in the carrying out of this extensive purchase program was obviously of great importance to the estates (R. 553). When Darrow filed his final reports and accounts as former trustee of both Federal and National, the Securities and Exchange Commission, the successor trustee, and the indenture trustee of Federal's bonds filed objections. These were referred to a special master (R. 134-148), whose detailed findings of fact and conclusions, insofar as pertinent herein (R. 498-560), were adopted by the district court (R. 583-584).

Kulp and Miss Johnson were employed by Darrow, were paid regularly salaries out of the estates, and were placed in key positions in the reorganization. As found by the Special Master, Miss Johnson had supervision over the trustee's office, advised Darrow on all phases of management, and assisted him generally in the reorganization of the subsidiaries. She had charge of all records including complete data respecting the properties, income and expenditures of the debtors and their subsidiaries, and was the best informed person in the organization regarding the various enterprises. Darrow depended upon her ability and judgment and regularly consulted her

regarding purchases of the securities of the subsidiaries, the allocation of funds for sinking fund operations and prices to be offered (R. 189-191, 209-211, 339, 513, 579).² Kulp was retained to manage the physical properties for Darrow. He also had access to all records and information and enjoyed Darrow's absolute confidence (R. 182, 199-200, 512-513).

Kulp and Miss Johnson were retained by Darrow with the express understanding that they were to be permitted to trade in securities of the debtors' subsidiaries (R. 511). Although Darrow testified that he had discussed their employment with the court and with counsel and others, it is undisputed, as found by the Special Master, "that he did not specifically tell these persons that Miss Johnson and Kulp would be dealing in the securities of the subsidiaries" (R. 512). During their employment by Darrow, Kulp and Miss Johnson traded extensively in bonds of the debtors' subsidiaries and, indeed, on many occasions sold bonds directly to Darrow as trustee. Much of this trading was through Colonial Securities Corporation ("Colonial"), a corporation wholly owned by Kulp and Miss Johnson. For a substantial period of Darrow's trusteeship, Colonial

² With respect to all but seven or eight subsidiaries Darrow had sole authority to determine prices. In the case of the other subsidiaries, maximum prices were fixed by the boards of directors or special trust committees, but Darrow usually had discretion to raise or lower the prices within prescribed limits (R. 513).

shared office facilities and personnel with the debtors' estates and dealt largely in securities of the debtors and their subsidiaries (R. 168, 513, 538-540, 579). The profits realized by them on these transactions amount approximately to \$43,000, of which \$8,600 was derived from direct sales to Darrow. In many instances, when purchasing from Miss Johnson, Darrow paid for the securities in advance of delivery or prior to her own purchases (R. 208, 337-338, 520-521). Frequently, bonds purchased by Miss Johnson or Colonial were sold at a profit to Darrow on the same day, or within a few days after their purchase, and some of the bonds thus sold to Darrow had been purchased by Miss Johnson from bondholders who had come to the office to sell their bonds to the trust. Darrow made no inquiry as to the prices Miss Johnson or Colonial had paid for the securities; he asked for no accounting and made no check of Colonial's books, to which apparently he had access (R. 210-211, 341, 514-515, 538-539).

By far the largest single transaction involved the acquisition by Miss Johnson and her associates of the substantial block of securities which had been turned over by Kulp to the Andresen trust (p. 4, *supra*). These were acquired by Miss Johnson at a total cost of \$24,000 (R. 518) at a judicial sale ordered by the Superior Court of Cook County, Illinois. These securities consisted of two lots, one involving \$199,000 face

amount of bonds of subsidiaries, the other substantial amounts of the debtors' securities.*

About one-half of the purchase price was obtained by Miss Johnson through a resale to Darrow of \$128,700 in face amount of bonds of the subsidiaries for \$12,447, although the cost to Miss Johnson of all the securities in that lot was approximately \$8,000 (R. 519-521). As was his custom (R. 519), Darrow paid for these securities in advance of delivery and, as the court below stated, "it is undisputed that the checks issued by Darrow to Colonial were used in making the payment due under the bid" (R. 683; 184 F. 2d 1, 6). Additional bonds of the subsidiaries were sold by Miss Johnson to customers of Colonial, who subsequently resold some of them to Darrow (R. 522). As a result, Miss Johnson realized a total of \$34,905 on the securities of the subsidiaries, or \$10,701 more than she had paid for both lots, and retained the debtors' securities at no net cost (R. 520-523, 556). The treatment of the latter securities, which may determine control over the reorganized debtors, is now pending before the District Court (R. 522, 557).⁴ The surcharge of

* These securities were: \$286,100 principal amount of Federal bonds; 62,358 units of beneficial interest of Federal, representing over 60 percent of the equity in Federal; and 10,761.6 units of National, representing about 25 percent of the equity in National (R. 518).

⁴ In accordance with the recommendation of the Special Master, the District Court has reserved jurisdiction to permit consideration of an additional surcharge against Dar-

the trustee which the court below set aside, in so far as it relates to this purchase, includes only the profits realized on the resale of the securities of the subsidiaries.⁵

In his report (R. 498-560), filed on April 28, 1948, the Special Master concluded that on the basis of the evidence Darrow's acquiescence and active support of the trading activities of Kulp row, depending upon the disposition of these securities (R. 556-557).

⁵ Jurisdiction was also reserved for further surcharge based upon so-called "accounts receivable." These are discussed in detail in the Special Master's report (R. 534-538). Briefly, it appears that during the period in which Jacob Kulp & Co. managed the properties of the subsidiaries it commingled in its bank account its own funds and those of the subsidiaries. Loans were made from these commingled funds to the weaker subsidiaries and to the debtors, and these loans were recorded as "accounts receivable" due to Jacob Kulp & Co. Since the total bank balances of Jacob Kulp & Co. were generally substantially less than the amounts due the various subsidiaries, it was evident that the loans made by Jacob Kulp & Co. were made from funds belonging to the stronger subsidiaries. At the sale in 1936 of these accounts receivable in the bankruptcy proceeding of Jacob Kulp & Co., Miss Johnson purchased at a net cost of \$400 these alleged receivables in the total face amount of \$172,436. These purchases were made for Kulp's son-in-law, but she retained an interest therein for herself and Kulp. Although he knew the nature and origin of these accounts and the manner of their acquisition, Darrow acquiesced in their allowance in the reorganization affecting six subsidiaries. The Special Master concluded that Darrow's failure to oppose the claims was "deserving of censure" (R. 558), but recommended no surcharge or other form of redress at this time in view of the possibility that damage might be eliminated in the pending reorganization of National and Federal (R. 559), and the District Court agreed with this recommendation (R. 584).

and Miss Johnson at a time when "the trusts and their subsidiaries were attempting to retire their indebtedness as rapidly and as inexpensively as possible * * * was pregnant with potential conflicts of interest" (R. 553), and that for allowing his employees' "infidelity to inflict direct financial loss upon the trusts" Darrow was derelict in his duties as trustee (R. 554). The Special Master, accordingly, recommended that Darrow be surcharged in the amount of \$43,000, representing the profits which these employees obtained as a result of their trading in securities of the debtors' subsidiaries. On consideration of the evidence and of the Special Master's report, the district court concluded that the evidence supported the findings and recommendations of the Special Master. On appeal by Darrow, the court below reversed the decision of the district court basically on the theory that, regardless of the profits made by Kulp and Miss Johnson, Darrow's purchases had been beneficial to the debtor (R. 675-692).

SUMMARY OF ARGUMENT

I

A preliminary contention is raised by the respondent to the effect that this Court is without jurisdiction on the ground that the petition was not filed by proper parties, since Stacy C. Mosser, in whose name the petition was filed, had resigned as cotrustee of both debtors prior to the filing

of the petition, and since, in respondent's view, the indenture trustee, who joined in the petition, has no standing to do so. In our view there is no merit to this contention. The position of a successor trustee is comparable to that of an assignee of an interest *pendente lite*. Since it is undisputed that this petition was actually, if not in name, filed by the present trustees, the motion for substitution is but a request for a formal correction of the record to indicate the present representatives of the debtors' estate whose interest is vitally affected by the order under review. Respondent's contention rests upon an irrelevant analogy to cases involving public officers. Also the indenture trustee has a statutory right to be heard in the proceeding which carries with it the right to seek review.

II

The court below did not disturb the ultimate facts as found by the Special Master and adopted by the District Court. The decision below appears to hold that a trustee who did not himself profit from the estate cannot be held accountable for knowingly permitting subordinates in responsible positions to engage in a course of conduct in conflict with the interest of the estate. In our view the statutory provisions and the judicial decisions, which emphasize the importance of a loyal and disinterested trustee in the management of a bankruptcy reorganization, would be vitiated if

the trustee were permitted to shut his eyes to activities of his subordinates in which he himself is forbidden to engage. Divided loyalties and conflicts of interest may produce the same type of harm when they prevail among the trustee's advisers as when the trustee himself is involved. The respondent's tolerance and active support of the trading activities of his subordinates constituted a flagrant abuse of his fiduciary responsibilities for the proper administration of the estates in reorganization.

In part, the decision below was based upon a lack of judicial precedent to support the surcharge. This overlooks the extensive powers of a bankruptcy court, as a court of equity, to adjust the remedy to meet the need. The surcharge in this case is essential to safeguard the administration of the bankruptcy reorganization and to compensate the estates for the immeasurable harm which the respondent's neglect of his fiduciary responsibilities produced.

ARGUMENT

I

THE SUBSTITUTION OF THE PRESENT TRUSTEES OF THE DEBTORS AS PETITIONERS IS PROPER

On January 25, 1951, Joseph Schwartz and Frank W. Whiston, the present trustees of Federal and National, respectively, filed a motion to be substituted as petitioners in lieu of Stacy C. Mosser, the nominal petitioner herein. This

Court has reserved action on the motion in order that it may be considered at the same time as the issues on the merits, and it is therefore before the Court at this time.

It will aid in the consideration of this problem to have the chronology of the events in mind:

August 13, 1943—Mosser became trustee of both Federal and National.

April 12, 1949—District Court issued order surcharging Darrow.

April 29, 1949—Darrow filed a notice of appeal from the district court order.

May 11, 1949—Guild, indenture trustee for Federal collateral trust bonds, filed a notice of appeal from the district court.

November 7, 1949—Schwartz became co-trustee of Federal and Whiston became co-trustee of National.

August 14, 1950—The court of appeals issued its order reversing the district court.

September 21, 1950—The court of appeals denied rehearing.

September 29, 1950—The court of appeals issued its mandate.

October 17, 1950—Mosser resigned as co-trustee of National.

October 26, 1950—The district court authorized Mosser and Schwartz, co-trustees for Federal, and Whiston, trustee for National, to file petitions for certiorari.

December 1, 1950—Mosser resigned as co-trustee of Federal.

December 18, 1950—Petitions for certiorari were filed in the name of Mosser as trustee for both debtors, and by Guild, the

indenture trustee for the Federal collateral trust bonds.

January 25, 1951—Schwartz, present trustee of Federal, and Whiston, present trustee of National, filed a motion to be substituted for Mosser, in whose name the petition had originally been filed.

We submit that the motion should be granted. The petition for certiorari was filed in the name of Mosser, who was the trustee of record in the court below, neither Schwartz nor Whiston having been made formal parties to the appeal and the mandate of the court having issued. It appears from the affidavit submitted in support of the motion for substitution, and this does not seem to be disputed, that the petition was filed "with the knowledge, consent and participation of Messrs. Schwartz and Whiston" and with the intention of subsequently applying to this Court for substitution. The proposed substitution involves no more than a formal correction of the record to designate the parties now responsible for continuing the litigation on behalf of the debtors' estates, and appears to be contemplated by Section 46 of the Bankruptcy Act, 52 Stat. 840, 860, 11 U. S. C. 74,* and to be in accord with the practice long followed in the courts.

* Section 46 of the Bankruptcy Act provides:

Death or Removal of Receivers or Trustees.—The death or removal of a receiver or trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with

1. The jurisdictional question raised by the respondent in opposition to the motion for substitution was answered by this Court in *Bowden v. Johnson*, 107 U. S. 251. That case involved a suit to enforce the statutory liability of a stockholder of an insolvent bank. The suit was brought by Bowden as receiver of the bank. In June 1878, Adams was appointed receiver of the bank in place of Bowden. The decree of the Circuit Court was entered in January, 1879, and an appeal to this Court was taken in the name of Bowden, who apparently was the party of record below. Adams filed a motion in this Court to be substituted as plaintiff and appellant. The appellees and their counsel, who had first heard of the appointment of Adams from the papers served on the motion for substitution, moved to dismiss the appeal, urging that no valid appeal was ever taken. This Court allowed the substitution; and since on the merits it was held that the receiver was entitled to judgment, the case was remanded to the court below "with directions to that court to enter a decree in favor of the substituted plaintiff; as receiver," 107 U. S. at 264.

The same principle was stated by this Court in *Gates v. Goodloe*, 101 U. S. 612, relied upon or defended by his joint receiver or joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint receiver or joint trustee alone or by such successor.

in the *Bowden* case *supra*. In that case a money judgment was obtained in the state court against three partners, and a judgment for a lesser amount was affirmed on appeal. On August 7, 1876, two of the partners were discharged in bankruptcy and on October 30th of that year all three partners brought the case to this Court on a writ of error. The defendant in error moved for dismissal on the ground that only the assignee in bankruptcy could prosecute the writ on behalf of the discharged partners. This Court denied the motion, stating that even if it were assumed that the bankrupts could not bring a writ of error after their discharge, "all difficulty, in that respect, has been removed by the application of the assignee for an order here substituting him as a plaintiff in error," and that, with both the assignee and the third partner before the court, "there is no sound reason why the cause should not proceed to a final determination upon the errors assigned," 101 U. S. at 613, 614.

It thus appears that in effect receivers and trustees or their successors are regarded as comparable to transferees or assignees of an interest *pendente lite*. It is well settled that such assignment is no cause for abatement of the action, and "the assignee may, at his own election, come in by an appropriate application, and make himself a party, so as to assume the burden of the litigation in his own name, or he may act in the name of his assignor," *Ex parte Railroad Co.*,

95 U. S. 221, 226. See also *F. A. Mfg. Co. v. Hayden & Clemons, Inc.*, 273 Fed. 374, 378-379 (C. A. 1). The substance of this rule is now reflected in Rule 25 (c) of the Federal Rules of Civil Procedure.⁷ Substitution is also proper in the appellate court even though the transfer of interest occurred prior to the appeal.⁸ Likewise, in *Bragg v. Gerstel*, 148 F. 2d 757 (C. A. 5), involving a bankruptcy proceeding, the court of appeals permitted the substitution of an assignee of a creditor's claim, and rejected the contention that the appeal was void because not taken by the real party in interest. The court stated that, "We do not think the appeal thus taken by an authorized attorney in the name of the original creditor was void. Gillett, the present owner, is properly to be substituted in the record as the true litigant on his motion, thereby assuming directly the costs to which he may become liable." 148 F. 2d at 759.

The assimilation of receivers, trustees, or their successors to the status of assignees *pendente lite*, suggested by this Court's decisions in the *Bowden* and *Gates* cases, *supra*, was indicated explicitly

⁷ Rule 25 (c) provides: "Transfer of Interest.—In cases of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." See also New York Civil Practice Act § 83 (1946); Deering's California Code of Civil Procedure § 385 (1949).

⁸ *Sumpter Lumber Co. v. Sound Timber Co.*, 257 Fed. 408, 410 (C. A. 9).

in *Myers v. Canton Nat. Bank of Canton, Ill.*, 109 F. 2d 31 (C. A. 7). That case involved a suit for a money judgment against a bank which was in receivership. The complaint was dismissed by the District Court because of failure to state a cause of action and the plaintiff appealed, naming the bank and the receiver as appellees. The appellees moved to dismiss the appeal on the ground that prior to the appeal a new receiver had been appointed and that consequently the appeal must be dismissed because an indispensable party, the new receiver, had not been made a party to the appeal. Although noting that neither party had previously called the attention of the court to the change in receivers, and while apparently no formal substitution was requested, the court overruled that motion, expressly citing Rule 25 (c) of the Federal Rules of Civil Procedure which it held applicable to appellate proceedings before it. Rule 25 (c) provides for the continuation of litigation after a transfer of interest. The court further stated that it was unnecessary to decide whether the new receiver was merely a proper or in fact an indispensable party, and added: "If the new receiver wishes to be substituted as a party and will apply for leave to be made a party, his request will be granted." 109 F. 2d at 34.⁹

⁹ Additional support for the views urged herein is derived from the cases dealing with the procedural effects of bankruptcy upon pending actions by or against the debtor. In such circumstances, the action does not abate by reason of

In the circumstances of this case, the substitution of the co-trustee or successor reorganization trustee is likewise proper. There is no dispute here over the authority of the present trustees to file the petition. The original orders dated November 7, 1949, appointing Whiston and Schwartz as cotrustees of National and Federal respectively and entered during the pendency of the appeal below, expressly authorized the cotrustees to institute or maintain suits for the recovery and protection of the property of the debtors and specifically authorized such trustees "to continue to defend any pending actions or suits in which the debtor or the trustees may have an interest as plaintiff, defendant or otherwise."¹⁰ It is like-

the debtor's bankruptcy. *Thatcher v. Rockwell*, 105 U. S. 467, 469-470; *Paradise v. Vogtlandische Maschinen-Fabrik*, 99 F. 2d 53, 55 (C. A. 3). At his election the trustee, although vested with legal title to the debtor's causes of action, may intervene or be substituted as a party; or he may let the suit continue and be bound by the judgment. See *Eyster v. Gaff*, 91 U. S. 521, 523-524. See also *Kaplan v. Joseph*, 125 F. 2d 602, 607 (C. A. 7). The same rules apply to derivative stockholders' action where bankruptcy of the corporation intervenes. See *Meyer v. Fleming*, 327 U. S. 161, 167-168.

¹⁰ These orders set out in the appendix to the motion for substitution authorized the co-trustees of both debtors (pp. 22, 26):

"h. to institute, prosecute, and maintain suits or proceedings at law, in equity, or under statute, in any court of competent jurisdiction, for the recovery, protection, or maintenance of the property, assets, and business of the debtor or of the trustees; and

"i. to continue to defend any pending actions or suits in which the debtor or the trustees may have any interest as plaintiff, defendant, or otherwise."

wise, undisputed that the District Court, by its order of October 26, 1950, specifically authorized the present trustees to file the petition herein. (Motion for Substitution pp. 29-30.) Accordingly, and especially in view of Section 46 of the Bankruptcy Act (p. 14, *supra*), the fact that the petition was filed by the present trustees in the name of their predecessors is at most a formal or harmless defect which, as in the *Bowden* case, the motion for substitution will correct. It is inconceivable that such formalities may be invoked to defeat the review by this Court of a controversy which is of vital interest to the estates and their security holders.

The decision of this Court in *Snyder v. Buck*, 340 U. S. 15, referred to by the respondent, is not relevant. That case dealt with the substitution of a public officer as a party, and the procedural problem there involved arose as a result of the unique and historic principle "that in absence of a statute an action aimed at or compelling an official to discharge his official duties abated where the official died or retired from the office," 340 U. S. at 18. All that it holds is that strict compliance with the statutory provisions for substituting the successor public officer is essential in order to avoid abatement. In *United States v. Boutwell*, 17 Wall. 604, 609, substitution of a successor public officer was not permitted in this Court because, in the absence of statutory authority, it would amount to "the exercise of original jurisdiction over both a new party and a

new cause." The cases discussed and cited above demonstrate that such conceptions are wholly inapposite to successor receivers or trustees.

Davis v. Preston, 280 U. S. 406, referred to by the respondent, also stems from the anomalous rule as to abatement of causes involving public officers. Since historically the public officer was not considered an assignee or transferee of his predecessor's interest, substitution, as the *Boutwell* case implies, is but a device for permitting a successor public officer, a "new party", to replace a predecessor and thereby obviate the necessity of an action *de novo*. Viewed against this historic background, all that the *Davis* case holds is that the statutory authority for substitution did not enlarge the appellate jurisdiction of this Court so as to extend the time for the filing by the new party of a petition for a writ of certiorari. See *Snyder v. Buck*, 340 U. S. at 21. In bankruptcy, however, the resignation of the trustee or the receiver is no cause for abatement; and even in the absence of a specific statute, this Court permitted in the *Bowden* case, *supra*, the substitution of a successor receiver and, in remanding the case, directed that judgment be entered in favor of the substituted receiver. From the standpoint of abatement and substitution, as we have noted above, the trustee or his successor is like an assignee of a cause of action during the pendency of the litigation, and the substitution procedure is merely an amendment of the record to designate the present rep-

representative of the estate which is the real party in interest.

It is significant that the *Bowden* case was decided in 1882, or 17 years before the Act of February 8, 1899 (30 Stat. 822), which was passed by the Congress at the suggestion of this Court in *United States ex rel. Bernardin v. Butterworth*, 169 U. S. 600, 605, to permit substitution of public officers.¹¹ In permitting the substitution in the *Bowden* case this Court in effect treated the substitution as merely an amendment of the record and stated (107 U. S. at 264) that "the power of amendment to this extent is authorized by section 954 of the Revised Statutes." This section of the Revised Statutes, formerly 28 U. S. C. 777, dealt with amendments pertaining to defects of form and provided that such defects shall not be a cause for abatement and that in its discretion the court "may at any time permit either of the parties to amend any defect in the process or pleadings."¹² We submit

¹¹ Of course, the abatement rule with respect to public officers was settled law long before the decision in the *Bowden* case. See *Secretary v. McGarrahan*, 9 Wall. 298, 313; *United States v. Boutwell*, 17 Wall. 604, 607-608.

¹² The Act of June 25, 1948, which revised Title 28, repealed former 28 U. S. C. 777 (62 Stat. 993). Amendments permitted thereunder are now governed by Rules 15 and 61 of the Federal Rules of Civil Procedure. Rule 15 gives the court wide discretionary powers to permit amendment of pleadings and Rule 61 relating to harmless error specifically provides for disregarding "any error or defect in the proceeding which does not affect the substantial rights of the parties."

that the same latitude should be applied to the substitution of a successor reorganization trustee, and the unique development in the law pertaining to the substitution of public officers ought not to be extended to areas where it has not been previously applied.¹³

2. Wholly apart from the status of the petition filed in the name of Mosser, one of the petitioners herein is the indenture trustee for Federal's collateral trust bonds, so that there is a proper petition for reviewing the order below insofar as it affects Federal. There is no merit in respondent's challenge of the indenture trustee's standing to file a petition. Section 206 of Chapter X (11 U. S. C. 606) expressly provides that "the debtor, *the indenture trustees*, and any creditor or stockholder of the debtor shall have the right to be heard *on all matters arising in a proceeding under this chapter.*" [Italics added.] This section has been construed to give these parties the absolute right to be heard in all matters arising in the proceeding which may affect their interest, and this right carries with it the right to appeal.¹⁴

¹³ Compare cases which except from the abatement rule a suit to enforce an obligation of a corporation or of a municipality to which the office was attached. See *Murphy v. Utter*, 186 U. S. 95, 101-102. This exception was also noted in *Snyder v. Buck*, 340 U. S. 15, 18, note 3.

¹⁴ See *Young v. Higbee Co.*, 324 U. S. 204, 210-213; *Matter of Keystone Realty Holding Co.*, 117 F. 2d 1003, 1005 (C. A. 3); *Dana v. S. E. C.*, 125 F. 2d 542, 543 (C. A. 2); see also *In re South State Street Bldg. Corp.*, 140 F. 2d 363, 367 (C. A. 7), certiorari denied, 322 U. S. 761.

In this case the indenture trustee participated in the proceedings in the district court and in the court below (R. 499, 568-569, 582, 585-586, 697) and the decision below clearly affects the interest of Federal's bondholders on whose behalf the indenture trustee has a statutory right to be heard and with it the right to seek review.

The respondent argues that Federal is solvent and hence, even though an indenture trustee generally may have the right to seek review, he cannot do so in the circumstances of this case since the bondholders' interest is not affected by the order of the court below. The question of solvency is a factual matter as to which the record is barren. There is nothing in this record to indicate the extent or the degree of the debtor's solvency and, since no plan of reorganization has yet been formulated, the impact of the order below upon the rights of creditors is not readily ascertainable at this time. At the very least, the order of surcharge, which the court below reversed, does affect the cushion or margin of safety for Federal's collateral trust bonds. Accordingly, it cannot be said as a matter of law that the interests of the public bondholders of Federal are unaffected by the order sought to be reviewed.

In his appeal below the respondent had made the indenture trustee a party appellee (R. 585-586, 591). He ought not be heard for the first time to object to the indenture trustee's statutory right to seek review of an order which, even on the limited facts presented by this record, would

appear to be of substantial consequence to the public bondholders of Federal.

II

IT WAS PROPER TO SURCHARGE THE BANKRUPTCY TRUSTEE FOR PROFITS REALIZED, WITH HIS KNOWLEDGE AND ASSISTANCE, BY HIS SUBORDINATES FROM TRADING IN SECURITIES OF THE DEBTORS' SUBSIDIARIES

On the appeal below, the respondent did not challenge the ultimate findings of fact as determined by the Special Master and affirmed by the District Court. The court below stated: "There is little, if any, controversy as to the facts pertinent to the problems presented in these appeals" (R. 678; 184 F. 2d 1, 3). Nor did the respondent in terms attempt to vindicate the trading activities of Kulp and Miss Johnson, or to deny his acquiescence therein. Rather, he contended that he could not be surcharged "for a wrongdoing of his employees" under the circumstances of this case; that Kulp and Miss Johnson were only "part-time" employees; and that they were "competent" employees whose services, he argued, he could not have secured "unless he permitted them to continue their established business (Colonial Securities Company) and further permitted them to deal in the underlying securities of the two bankrupt trusts." (Br. pp. 27, 28.) He also argued that the estates had suffered no actual loss from the trading activities he permitted, and on the whole had benefited from his administration.

Without disturbing the ultimate findings of fact, the court below reversed the order of

surcharge, holding that the respondent could not be held accountable for the trading of his subordinates because it considered that his purchases had benefited the estates and that the surcharge was without precedent.

1. Although under the Bankruptcy Act the reorganization trustee is not prohibited from employing officers affiliated with the estate, it is undeniable that in retaining their services the trustee may not enter into any arrangement in conflict with his fiduciary responsibility for the proper and effective administration of the reorganization. Nor is the trustee thereby relieved "of the duty of exercising care and prudence within the field left to his discretion." *United States ex rel. Willoughby v. Howard*, 302 U. S. 445, 452. The retention of Miss Johnson and Kulp, whatever their competence, upon condition that they be permitted to trade in the securities of the debtors and their subsidiaries was in itself inconsistent with the elementary dictates of common prudence. Since one of Darrow's important undertakings as trustee was to purchase bonds of the subsidiaries, the employment of Kulp and Miss Johnson under the circumstances gave them, in addition to their regular remuneration, continuous opportunities for profit, to the detriment of the estate on the basis of inside information, and necessarily led to divided loyalties and continuous conflicts of interests in the day-to-day administration of the reorganization proceedings. Darrow's tolerance and active support of

the trading activities of Kulp and Miss Johnson, coupled with his complete failure to exercise an independent scrutiny of these activities, constitute an abdication of his supervisory duties with respect to his subordinates and a flagrant abuse of his responsibilities for the proper administration of the estates in reorganization. The Special Master and the district court held him derelict in both respects (R. 553-4, 584).

The potential dangers to the estate from the arrangements made for the retention of Kulp and Miss Johnson should have been obvious to Darrow at the outset. At the very least, he should have sought the advice of the court before embarking on so dubious and hazardous a course. Although he claimed that he had informed the court of their employment, it is clear, as already noted, that he did not specifically disclose "that Miss Johnson and Kulp would be dealing in the securities of the subsidiaries" (R. 512). Certainly, it was Darrow's responsibility to dispense with their services, as he undoubtedly had the power to do, when the consequences of their divided loyalties and conflicting interests became more patent. Darrow, however, not only failed to take the necessary action but knowingly permitted their trafficking in securities to continue without restraint and aided their trading by allowing them to profit on sales to him and by making payments in advance of delivery. Without providing any semblance of justification he

has maintained that whether or not his subordinates traded in securities and profited by selling to him or in the market generally, the amount of their profit were none of his concern (R. 211, 341, 514). Having deliberately disregarded his obvious responsibility for supervising their activities, he cannot escape accounting for the foreseeable and, indeed, inevitable consequences of his willful neglect. *Cf. Meinhard v. Salmon*, 249 N. Y. 458, 164 N. E. 545 (1928).

The circumstances that Darrow himself did not personally profit by the trading of his subordinates and that Kulp and Miss Johnson may have been "part-time" employees—and this apparently is emphasized by the court below (R. 685-686; 184 F. 2d 1, 4, 7)—is beside the point. It is axiomatic that the standards of fiduciary responsibility, which exclude divided loyalties and conflicts of interests with respect to the trustee, necessarily impose upon him an affirmative obligation not to tolerate—much less actively support—the same vices in his subordinates. Divided loyalties and conflicts of interests tend to produce the same harm when they prevail among employees, upon whose skill and knowledge the trustee relies for the proper discharge of his own fiduciary responsibility, as when the trustee himself is involved. There can be no doubt that in deliberately condoning and actively supporting a course of dealing by his subordinates

which was obviously against the interests of the estate, Darrow was guilty of misconduct.

The record certainly does not support any characterization of the employment of Kulp and Miss Johnson as "part time" in the sense that their connection with the administration of the estate was casual or that the consequences of their freedom to trade in securities of the debtor and its subsidiaries was insignificant. As to their duties as employees of the trustee, Miss Johnson particularly was in a sensitive position. She advised the trustee on his purchase program and apparently handled for him negotiations leading to the acquisition of securities. She had a wide acquaintance among the security holders and knew more about the financial affairs of the estates than any other person (R. 512).¹⁵ The important question was not whether she was a "part time" or a full-time employee, but whether her private and official activities conflicted. There can be no doubt that they did. Insofar as Kulp and Miss Johnson were in fact "part

¹⁵ Kulp and Miss Johnson were no mere outsiders retained by Darrow to assist him in routine matters of administration. They had been the promoters and organizers of the underlying building companies and of the debtors, and through Jacob Kulp & Co., which they controlled, they had underwritten and distributed by public sale almost all the underlying bonds of the subsidiary companies. The entire equity of the 27 building companies originally had been held by Kulp and his family, and Jacob Kulp & Co. had managed the various properties pending the reorganizations (R. 152, 262, 578, 679).

time" employees of the trustee, it was because they utilized the remainder of their time in the very trading activities condemned by the Special Master and the district court.¹⁶ In this sense, any faithless employee is a "part time" employee.

2. The decision of the court below emphasizes that Darrow's program of purchasing securities of the subsidiaries was beneficial to the estate, and that he purchased the securities from Miss Johnson of Colonial at prevailing "market" prices (R. 681, 683, 184 F. 2d 1, 5, 6). We believe it is irrelevant that in view of the general price rise for real estate and real estate securities, the estates have benefited from Darrow's purchases. The surcharge would compensate the estates for additional benefits they might have received had Darrow acted properly. Aside from the question of Colonial's influence on the "market",¹⁷ Miss Johnson's advice to Darrow

¹⁶ The record also shows that during the time of Darrow's appointment Colonial's business was almost entirely concerned with the securities of the debtors and their subsidiaries (R. 155, 160-1, 168, 207). It served merely as the corporate medium for trading by Johnson and Kulp in the underlying securities and their employment by Darrow, far from interfering with the operation of Colonial, provided them, as we have noted, with additional advantages to aid their trading activities.

¹⁷ Miss Johnson testified: "Colonial was the trading house for all the securities since no one knew Darrow or Federal" (R. 188). Darrow's accountant testified: "I would not say that Colonial maintained a market for the securities of the subsidiaries but they assisted in maintaining a market. The trusts and the individual companies maintained the market . . . While Colonial was active, brokers contacted it

with respect to the timing of, and prices for, his purchases necessarily was in conflict with her own interest as a trader in the over-the-counter market.¹⁸ Systematic trading by Miss Johnson and Kulp, directly or through Colonial, was bound to interfere with Darrow's opportunities to make the favorable purchases which Miss Johnson or Colonial appropriated for their own account. The Special Master found (R. 514):

Thus, when bondholders came into the office desiring to sell bonds, Miss Johnson knew what price Darrow was paying and purchased at a price below that figure. She told the security holders that they were getting the "market price" for their bonds and purchased on her own behalf or on behalf of Colonial. The bonds so purchased were subsequently resold to Darrow. In almost every case Miss Johnson or Colonial made a profit. (SEC Exs. 5 and 6.) Occasionally Colonial sold bonds

regarding the purchase and sale of bonds. As a result of those contacts, bonds were sold to Darrow and this represents a substantial portion of the bonds he bought. Brokers who wanted to sell bonds would contact Colonial, find out the price, and then the bonds would be sold to Darrow. Apparently, Colonial was the source of market information or clearing house for the bonds of the subsidiaries" (R. 155, 160-161).

¹⁸ According to Darrow's own testimony (R. 211), when bonds did not come in fast enough, he frequently discussed with Miss Johnson whether the price was too low, and after a new price was established, anybody who offered bonds, including Johnson and Colonial, could get that price. That price would continue in effect until Miss Johnson and he got together and changed it.

at cost or less, but Miss Johnson testified that she, personally, always sold at a profit.

Darrow's common practice to pay Miss Johnson ~~on~~ Colonial in advance of delivery tended to accentuate this conflict of interest. The acquisition of the securities in the Andresen trust sold at the judicial sale, described above (pp. 7-9, *supra*), provides a graphic illustration in point.¹⁹

The benefits which Darrow's purchase program had secured for the estates cannot be used as an "offset" against the substantial detriments which, as we have indicated, his neglect of duty had brought about. As reorganization trustee, it was his obligation to exert his skill and efforts at all times exclusively for the benefit of the estates and to administer his trust properly and effectively. Manifestly, it was on the assumption that his services were in keeping with this responsibility that allowances had been granted to him in the course of the reorganization.²⁰ Since he was re-

¹⁹ The importance of Darrow's financial assistance in connection with his subordinates' purchases is underlined by his position that their limited financial resources justified abandonment of a claim by the estate against them despite advice of counsel that there was about an even chance of making a recovery (R. 530-534).

²⁰ The record shows that to date the respondent has received allowances in the amount of about \$58,000 (R. 11, 39). The district court sustained objections to the granting of any further allowances to the respondent, reserving jurisdiction "to make such further orders respecting . . . the allowance or disallowance of compensation as requested by former Trustee Darrow, as equity may require" (R. 584-585).

miss in his duties with respect to his subordinates, he cannot avoid accountability simply because in some other respects he had discharged his obligations properly.

3. Insofar as the court's holding is based on lack of precedent for surcharging the trustee for the profits realized by his employees, it ignores the extensive powers of a bankruptcy court over the conduct of fiduciaries. As this Court has pointed out in *American United Mutual Life Ins. Co. v. City of Avon Park*, 311 U. S. 138, 146:

Where * * * investigation discloses the existence of unfair dealing, a breach of fiduciary obligations, profiting from a trust, special benefits for the reorganizers, or the need for protection of investors against an inside few, or of one class of investors from the encroachments of another, the court has ample power to adjust the remedy to meet the need. * * * That power is ample for the exigencies of varying situations. It is not dependent on express statutory provisions. It inheres in the jurisdiction of a court of bankruptcy.

In enforcing this standard of fiduciary responsibility, the bankruptcy courts have applied a variety of appropriate sanctions.²¹ On the un-

²¹ See, for example, *Taylor v. Standard Gas & Electric Co.*, 306 U. S. 307, subordination of parent's claims against subsidiary; *Woods v. City National Bank and Trust Co.*, 312 U. S. 262, denial of compensation; *Young v. Higbee Co.*, 324 U. S. 204, accounting for profits; *In re Norcor Mfg. Co.*, 109 F. 2d 407 (C. A. 7), limitations of claims to cost; *In re Realty Associates Securities Corp.*, 56 F. Supp. 1008 (E. D. N. Y.),

disputed facts of this case, surcharging the trustee for profits made by his advisers is entirely appropriate. In large measure the correlation between damage to the estates and the surcharge is derived from the fact that these profits flowed from the trading advantages which Miss Johnson and Kulp secured through information and opportunities afforded them as "insiders", and represent benefits which a trustee mindful of his fiduciary responsibility might have secured for the estates.

The surcharge in this case may not reflect a precise equivalence between the overall profits obtained by Darrow's subordinates and any mathematically ascertainable losses incurred by the estates. Nevertheless the Special Master's report, adopted by the District Court, did rest upon the conclusion that Darrow "allowed their infidelity to inflict direct financial loss upon the trusts in many instances" (R. 554).²² The bankruptcy

disqualification from serving on a committee; *In re Schroeder Hotel Co.*, 86 F. 2d 491 (C. A. 7), enjoining communications with security holders.

²² That the basis for the surcharge was to protect the estate from certain, although indeterminable, harm is further emphasized by the treatment of the insurance brokerage commissions in the amount of over \$16,000 which Kulp was permitted to realize in placing insurance on properties of director's subsidiaries. Although this arrangement was criticized it was found that the estate did not suffer since the rates were standardized and Kulp's familiarity of the properties was useful in reducing fire hazards and thereby effecting reductions in premiums. Accordingly, no surcharge was recommended with respect to these commissions (P. 526-527, 557-558).

court is not required to measure the precise extent of injury to the estates by determining which aspect of the reorganization has been corrupted by the activities of the trustee's subordinates and which has not: Administratively, such a task is not feasible since "the incidence of a particular conflict of interest can seldom be measured with any degree of certainty." *Woods v. City National Bank and Trust Co.*, 312 U. S. 262, 268. Cf. *Taylor v. Standard Gas & Electric Co.*, 306 U. S. 307, 323. Such is particularly the case where, as here, the manifestations of conflicting interests were not occasional but persisted over a period of years in the day-to-day administration of the estates. In view of these circumstances, the remedy of the surcharge is but an application of the ancient principle "that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created," *Bigelow v. RKO Pictures, Inc.*, 327 U. S. 251, 265. To insist upon a more precise measure by which the consequences of the respondent's wilful wrongdoing are to be determined is to encourage, rather than to deter, misconduct. As this Court said in the *Bigelow* case, "Any other rule would enable the wrongdoer to profit by his wrongdoing at the expense of his victim. It would be an inducement to make wrongdoing so effective and complete in every case as to preclude any recovery, by rendering the measure of damages uncertain. Failure to apply it would mean that the more grievous the wrong

done, the less likelihood there would be of a recovery." 327 U. S. at 264-265. See also *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U. S. 555, 563.

There is a further consideration which we believe supports the District Court in resolving against Darrow any uncertainties as to the extent of the damage flowing from his maladministration. The record shows that during eight years of administration from 1935 to 1943, Darrow filed but one interim account of National and no account for Federal (R. 546). The district court remarked, "little or no explanation was offered the Master for the Trustee's woeful neglect of such a fundamental duty" (R. 583). The court below agreed with that conclusion (R. 690; 184 F. 2d 1, 10). The district court observed that Darrow's "failure to file reports rendered the determination of his reports and accounts not only extremely difficult but it necessitated conducting a great many hearings extending over a period of several years" (R. 583). It was in the extensive hearings on his final accounts that the facts were brought into full light.²³ Thus, Darrow's

²³ On June 19, 1942, the district court specially appointed one Frederick B. Andrews, a certified public accountant, to make an investigation of the trading transactions of Federal and National and its subsidiaries (R. 579). On August 13, 1943, Darrow resigned as trustee of Federal and National following a preliminary inquiry by this Commission and the submission of the Andrews Report to the court (R. 547-548, 580).

failure to file periodic reports, as required by law, to a large degree delayed inquiry into his administration, and prevented an earlier termination of an employment arrangement which produced the substantial damage to the estates.

4. The cases relied upon by the court below (R. 686-689; 184 F. 2d 1, 7-9) do not in our view support its decision, but merely stand for the general proposition, which we concede, that a trustee is only required to exercise reasonable care and prudence in the administration of his trust and that he is not subject to surcharge for the wrongful conduct of his employees where such misconduct has occurred without the trustee's fault or neglect and through no lack of proper supervision. However, it is equally well settled that a trustee must be surcharged for injury resulting from his negligence in supervising his employees. See *Carson, Pirie, Scott & Co. v. Turner*, 61 F. 2d 693 (C. A. 6); *In re Curtis*, 76 F. 2d 751 (C. A. 2). *A fortiori* the remedy of surcharge is essential where the loss or injury to the estate results from the trustee's deliberate failure to supervise the activities of his subordinates and from his active support of their improper activities.

5. In the court below the respondent argued that, even if a surcharge were proper in this case, it should be reduced by the expenses incurred by Colonial in realizing the profits on its trading transactions, such as commissions paid

to salesmen, office rent, clerical help, telephone charges, and the like.

This argument was presented to the Court of Appeals as an afterthought. In the course of the extensive hearings before the Special Master no clear proof was offered on behalf of the respondent with respect to the amount of these claimed expenses, and since this matter was not specifically raised before the District Court (R. 565-567), the respondent is precluded from raising it for the first time on review.²⁴ Nor, in our view, is there any merit to this contention. Had Darrow himself conducted the securities business and traded in the securities related to the debtors, he clearly could not have been permitted to offset such items against the profits for which he would be required to account. See *Young v. Potts*, 161 F. 2d 597, 600 (C. A. 6); cf. *Magruder v. Drury*, 235 U. S. 106, 118-120. There is no basis for applying a different rule where he is surcharged for the trading transactions of his subordinates. Since these profits represented the fruits of the trading advantages which Miss Johnson and Kulp secured as insiders, and represented in a large measure benefits which otherwise might have redounded to the estates, the fact that Kulp and Miss Johnson had to incur expenses through Colonial to avail themselves of these

²⁴ *In re Waern Building Corp.*, 145 F. 2d 584, 586 (C. A. 7) certiorari denied, 324 U. S. 871; *In re Grosse*, 24 F. 2d 305, 306 (C. A. 7).

profit-making opportunities neither mitigates the injury to the estates for which Darrow was responsible, nor lessens the measure of his accountability. Since, by its very nature, the extent of injury to the estates is not susceptible of precise measurement, the amount of surcharge as determined by the district court represents an appropriate measure of Darrow's liability.

CONCLUSION

For the reasons set forth above, the judgment of the court below should be reversed and that of the District Court should be affirmed.

Respectfully submitted.

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MARCH 1951.

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IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1950.

No. 461

In the Matter of

FEDERAL FACILITIES REALTY TRUST, a Common
Law Trust, and **NATIONAL REALTY TRUST**, a Com-
mon Law Trust,

Debtors,

STACY C. MOSSER, Successor Trustee of National Realty
Trust and Federal Facilities Realty Trust, and **JOHN W.**
GUILD, Indenture Trustee, etc.,

Petitioners,

vs.

PAUL E. DARROW, Former Trustee of National Realty
Trust and Federal Facilities Realty Trust,

Respondent.

**REPLY BRIEF OF PAUL E. DARROW, FORMER
TRUSTEE IN BANKRUPTCY, TO BRIEFS OF
PETITIONERS AND SECURITIES AND
EXCHANGE COMMISSION.**

STATEMENT OF THE CASE.

I.

All of the Briefs filed by the Petitioners and the Securities and Exchange Commission in this Court contain Statements of Fact. However, all of those statements, in our opinion, fail to give this Court a true and complete picture

of Respondent's administration of the Estates of National and Federal. The major fault of those statements is that they all water-down and minimize certain important and controlling facts which should be brought to the attention of this Court. We, therefore, propose to make a brief additional statement.

BENEFITS TO THE ESTATES RESULTING FROM THE EMPLOYMENT OF KULP AND JOHNSON.

As a direct result of the activities of Respondent Darrow's part-time employees, Myrtle Johnson and Jacob Kulp, in aiding him in the management of the two Trusts, both Trusts and their various subsidiaries have substantially benefited. The Court of Appeals was obviously impressed with that important fact and devoted several pages of its opinion to a discussion of those benefits. That Court, after stating that it was Darrow's policy as Trustee to purchase the outstanding securities of the subsidiary corporations, made findings (Rec. pp. 680-682) which may be summarized and paraphrased as follows:

Reduction of Indebtedness of Subsidiaries.

Due to these purchases made by Darrow largely through and with the aid of Johnson and Kulp, the obligations of the subsidiaries of National and Federal were reduced during the eight years of Darrow's trusteeship from \$7,611,700 par value to \$5,197,100 par value. As a result, the total bonded indebtedness of the subsidiaries was reduced under Darrow's administration in the sum of\$ 2,414,600.00

Actual Profits Made by the Two Trusts.

The Court of Appeals next found that as a result of Darrow's purchase of bonds of

the subsidiaries of Federal, for the account of Federal, that Trust has realized an actual cash profit of\$ 79,729.45

The Court arrived at this figure on the following basis: The total cost of bonds purchased by Darrow for the account of Federal was \$31,864.55. At the time of the hearings before the Master, the market value of these bonds was in excess of \$87,100. From the date of their purchase by Darrow to the hearings before the Master, Federal had received on these bonds \$24,494 in interest. The amount of the actual profit realized by Federal on these purchases by Darrow is obvious from these figures.

The Court next found with respect to National, that as a result of Darrow's purchases of bonds of subsidiaries of that Trust and for its account, National has realized an actual cash profit of\$ 51,122.56

This figure is arrived at by the same method of computation as in the case of Federal. The total cost of bonds purchased by Darrow for National was \$47,469.25. At the time of the hearings before the Master, the market value of these bonds was \$77,179. From the date of their purchase by Darrow to the date of the hearings before the Master, National had received on these bonds \$21,412.81 in interest. The amount of the actual profit realized is again obvious from these figures.

The Court next found that Darrow had acquired from the First National Bank of Chicago for the sum of \$12,000, Collateral Trust bonds issued by Federal which had a par value of \$84,000. With respect to these the Court further found that "it seems to be reasonable" that these bonds on a reorganization will be "found to be worth par." The Court also found that in the meantime since the date of Darrow's ac-

quisition of such bonds, Federal has been relieved from the payment of or the obligation to pay interest on such \$84,000 of par value of its bonds. Therefore (without regard to the saving of interest), it appears that on this transaction of Darrow's, Federal has realized another actual profit of . . . \$

72,000.00

This purchase of bonds from the First National Bank, it should be noted, was made at the suggestion and with the cooperation of Johnson and Kulp (R. 279).

The Court of Appeals next made findings with respect to the bonds of the various subsidiaries purchased by Darrow from Johnson in the so-called "Seligman transaction." The facts with respect to that transaction are extremely complicated as indicated by the Statements of Fact in the various Briefs; in the Master's Report and in the opinion of the Court of Appeals. However, the net result of the transaction as found by that Court, was that an actual cash profit had been realized by the estates, up to the date of the hearings before the Master in the amount of . . . \$

18,747.45

This profit is computed upon the following facts as found by the Court: That Darrow had paid \$12,447.55 for these bonds and that at the time of the hearings before the Master they had a market value of \$31,195. The amount of the profit is obvious.

The total actual profits realized by the two Trusts by Darrow's purchase of bonds of the various subsidiaries for the accounts of the two Trusts as shown above is . . . \$

221,599.00

These findings of the Court of Appeals cannot be disputed, since they are taken directly from the Report of the Master. The above figures clearly demonstrate the great value of the services of Johnson and Kulp to Darrow in the administration of the two Trusts.

**THE PETITIONERS AND THE SEC BOTH MINIMIZE
OTHER IMPORTANT FACTS CONCERNING THE
EMPLOYMENT OF JOHNSON AND KULP.**

There are two other main aspects of the employment of Johnson and Kulp which are ignored or minimized in the Statements of the Case in the Briefs of the Petitioners and the SEC which we feel are necessary to a proper understanding of the case by this Court. These are as follows:

**Johnson and Kulp of Great Value to Darrow in Other
Respects.**

This Court, we believe, will take judicial notice of the many complicated business and financial situations involved in the administration of National and Federal and their 27 subsidiary corporations which were all in financial difficulties at the time of Darrow's appointment as Trustee. Prior to his appointment, the two Trusts and their Subsidiaries were being administered by Andresen, who had succeeded Johnson and Kulp as Common Law Trustee of the two Trusts. He also had been acting as Trustee under a trust agreement set up by Kulp for the benefit of the security holders of Federal and National and their subsidiaries (Rec. pp. 154, 155, 182, 204, 517, 532, 538, and 540). During Andresen's administration of the two Trusts, including the operation of their 27 subsidiaries, he had employed Johnson and Kulp on a part-time basis to assist him as Trustee. While employed by Andresen, they continued to operate Colonial Securities Company as a private business as they had done in the past (Rec. pp. 272, 273). When Darrow was appointed trustee for Federal and National, Andresen recommended to him that he continue

Johnson and Kulp in his employ as Trustee (Rec. pp. 318-319) because of their familiarity with the entire organization and their knowledge of the many complications which had arisen in connection with the affairs of the various subsidiaries. The Court of Appeals made the following finding with respect to that situation:

"After the appointment and qualification of Darrow, the former trustee, George Andresen, recommended to him that he employ Jacob Kulp and Myrtle Johnson to assist him. It was pointed out that they were well qualified to assist because of their intimate knowledge of the workings of the Trusts and their subsidiaries."

Johnson and Kulp Part-Time Employees Only.

Johnson and Kulp made it a condition of their employment by Darrow that they would be expected to devote only part of their time to the affairs of the Trusts, and that they would have the right to operate Colonial Securities Company and continue in the business of purchasing and selling securities for the account of Colonial and for their own account as they had done while employed by Andresen (Rec. pp. 188, 189, 273, 274, 318, 319, 339, 340, 343, and 344). The Court of Appeals made the following finding on that point:

"Miss Johnson and Kulp made it clear that they would remain as part-time employees only on condition that they be allowed to continue to operate in the securities business through Colonial Securities Company. Darrow employed them on a part-time basis and they continued to operate Colonial in the same way that had been practiced during their employment by the Andresen Trust."

DARROW'S MOTIVES AS TRUSTEE.

The entire record shows that during all the period of Darrow's administration of the two Trusts he was at all times concerned with what would benefit the Estates he represented and make their reorganization possible. He was actuated by the best of motives and the policy which he adopted was what he considered to be for the best interests of the Estates (R. p. 198). He had no selfish motive and he made no personal profit as a result of his purchases of securities (Rec. pp. 515-554). The results which he accomplished speak for themselves.

DARROW'S OWN JUDGMENT ON PURCHASES DECISIVE.

Another important fact situation which is utterly ignored and omitted by the Statements of the opposition here, but which should be understood by this Court, is this: It was Darrow's judgment and discretion as Trustee that made the decision as to the purchase of each and every item of the several million dollars par value of securities that were purchased by Darrow as Trustee under his management of these two Trusts and at very satisfactory depreciated prices (Rec. pp. 334, 513). The Record shows two things with respect to every individual purchase of securities for these two Estates: *First* that Darrow exercised his personal prerogative as Trustee to say yes or no as to whether the purchase would be made; and *second* that in each individual instance the purchase was made at the going market price of the securities. Thus it appears affirmatively in this case that Darrow stood as the final arbiter in deciding what was for the best interests of these two

Estates in the case of every purchase made through his two employees.

Darrow was an experienced business man. Among other business activities he had been employed in a Chicago bank and had also spent five years in the employ of one of the leading stockbrokers of Chicago, just prior to his appointment as Trustee of these two Estates (R. 202).

**NO PRIVATE RIGHTS OR INTERESTS HERE
ALLEGED—ABSTRACT AND ACADEMIC IS-
SUES ONLY.**

This proceeding purports to have been filed on behalf of Mosser as Trustee in Bankruptcy of these two Estates, plus the intervention of Guild, who appears in the Record only as an indenture-trustee in one of these Estates (Federal). The proceeding, therefore, involves solely the private rights and interests—if any—of the creditors of these two Bankrupt Estates. Under the rules of Pleading it is necessary that a plaintiff's Statement of the Case shall charge and set forth his substantial rights and interests in the controversy. A similar rule should apply to a Statement of the Case in a Brief in this Court. A reading of the Statements which have been made by the Petitioners and the SEC in their Briefs in this Court shows that they contain no assertions or claims of financial interest on the part of any person involved in this case. In Respondent Darrow's Answer to the Petition for Certiorari and Brief filed in this case (pp. 21, 23) it was charged that no property rights whatever are here involved, and that the proceeding is "a purely abstract and hypothetical effort to establish new law." That charge has nowhere been challenged by any of the succeeding Statements or Briefs of either the Petitioners or the SEC.

Accordingly it must be taken for granted in this case that there is an utter lack of any financial interest on the part of anyone.

Indeed the Opinion of the Court of Appeals strongly suggests that lack of financial interest (Rec. p. 682) where it specifically says that the "expectation seems to be reasonable" that all of the bonds of Federal will be paid at par and therefore, no creditor at least of that Estate will lose a cent, because of Darrow's able management of its affairs. It is the bonds of Federal which Guild, one of the Petitioners, represents as indenture trustee.

UNFAIR IMPLICATIONS IN THE STATEMENTS OF FACT BY PETITIONERS AND SEC.

There are several statements made by Petitioners and the SEC which are unfair and which we feel carry with them improper implications which tend to give this Court wrong impressions on several phases of the case. We call attention to some of them.

The Andrews Report and Darrow's Resignation.

Petitioners state (Br. p. 4) that Darrow resigned as Trustee of National and Federal "following a thorough investigation and report of his administration as Trustee by Frederick B. Andrews." This statement creates the impression that Darrow resigned as Trustee *because* of such report, and it further implies that the report in some way disclosed facts reflecting on his integrity or indicating that he had not administered the Trusts successfully or in their best interests. There is nothing in the Andrews report which caused Darrow to resign as Trustee, nor is there anything in that report reflecting on his loyalty to the Trusts or his accounts.

Since the question of the reason for Darrow's resignation has been raised by Petitioners by what we consider to be their unfair reference to the Andrews report, we feel it necessary to state that the record discloses that Darrow resigned as a result of an altercation which he had with representatives of the Securities & Exchange Commission in Chicago in 1943 with reference to his employment of Johnson and Kulp and their alleged profits in trading in securities of the Trusts. Darrow testified (Rec. p. 347) that he was told by the Regional Director of the SEC, who had summoned him to his office on that occasion, that unless he discharged Johnson and Kulp the Commission would take steps to have him removed as Trustee. The Regional Director denied that he had made that statement. In any event, it appears conclusively from the Record that Darrow's resignation came about because of that altercation over the question of Johnson's and Kulp's employment and their trading in the securities of the Trusts.

"Interception" of Bonds by Johnson and Kulp.

Petitioners (Br. p. 6) state that while Johnson and Kulp were employed by Darrow they individually and in the name of Colonial "intercepted" and purchased bonds brought in to the Trustee's office by bondholders seeking to sell them and they cite in support of that pages 168, 513 and 579 of the Record. The use of the word "intercepted" is improper. It is not borne out by the Record. There is nothing in the testimony at the pages of the Record cited by Petitioners to justify the use of that word. It appears to us that Petitioners, by the use of the word, have sought to create the impression that Johnson and Kulp surreptitiously and without Darrow's knowledge pur-

chased bonds by keeping the sellers of those bonds away from him. This is not a fact and there is nothing in the Record to so indicate. We repeat, the unfair implication from the unjustified use of the word "intercepted" by Petitioners is highly improper.

SUMMARY OF RESPONDENT'S ARGUMENT.

1. The employment of Kulp and Johnson was essential to the best administration of these two Bankrupt Estates. As the leading managers of these two Trusts before Bankruptcy they were thoroughly familiar with the complicated business and financial affairs of both Federal and National, as well as of their 27 subsidiary Corporations.

2. Both of these part-time employees were found to be thoroughly "competent" by the Master, and their skilled services to Darrow during the 8 years of his administration as Trustee were an important factor in producing the large benefits and profits to both Trusts which Darrow achieved by purchasing the underlying securities of the subsidiary Corporations, as shown in the above Statement of the Case.

3. Under these admitted facts, and under the applicable law, Darrow as Trustee, was thoroughly justified in retaining Kulp and Johnson in his employ.

4. Since Darrow's own conduct as Trustee was in all respects entirely honest and upright as found by the Master, it was most unjust and inequitable for the District Court to attempt to "surcharge" him in the large sum of more than \$43,000.00, when he personally had acted in complete good faith.

5. There is no jurisdiction here because of the lack of proper Parties as Petitioners. This Certiorari proceeding should be dismissed on that ground alone.

ARGUMENT.

I.

UNDER THE COMMON LAW, WHICH HAS BEEN ADOPTED BY THIS COURT, A TRUSTEE CANNOT BE SURCHARGED FOR ALLEGED IMPROPER ACTS OF HIS AGENTS OR EMPLOYEES, UNLESS THE TRUSTEE HAS BEEN GUILTY OF "SUPINE NEGLIGENCE OR WILLFUL DEFAULT".

The Common Law as the Rule of this Court.

This Court in a recent Bankruptcy case, decided in 1937,¹ held that the test of whether a Bankruptcy Trustee should be subjected to a surcharge was to be determined by Common Law principles and said:

"By the common law every Trustee or Receiver of an estate has the duty of exercising reasonable care in the custody of the fiduciary estate" etc.

By the decision in that case this Court accordingly has adopted the Common Law principles laid down by early English courts concerning surcharging Trustees in Bankruptcy.

¹ We respectfully request the Court to consider also the Argument contained in each of the two prior Briefs filed on behalf of Respondent Darrow in this Court before Certiorari was granted.

² *United States ex rel. Willoughby v. Howard*, 302 U. S. 445; 82 L. Ed. 352; 59 S. Ct. 275 (1937).

The Opinion of this Court in the *Willoughby v. Howard* case does not discuss the Common Law on the point but contents itself with setting forth an extended Note citing numerous cases where that doctrine of the law has been applied.

A Leading Case in This Court on the Point.

In the *Willoughby v. Howard* case this Court was merely following a rule which it had established more than 100 years ago in the leading case of *Taylor v. Benham*, 5 How. 233, 12 L. Ed. 130, decided in 1846. In that case this Court refused to surcharge a Trustee for a substantial sum of money, which it was charged the Trust had lost because of the alleged "negligence" of the Trustee in failing to sell certain real estate. In so holding this Court said:

"A Trustee is liable for misconduct, or breach of trust, or negligence, as well as for money actually received. And if in these ways he injures his *cestui que trust*, he is liable, whether he himself gains by his misbehavior or not. * * *

"*When a Trustee is made liable for more than he has actually received it must be in the language of the Books 'in cases of very supine negligence or willful default.'* 4 Johnson's Ch. 527 and 634; *Bypus v. Smith*, 1 Ves. Jr. 189, 30 Full English Reprint 294 (1790); *Palmer v. Jones*, 1 Vern. 144; *Osgood v. Franklin*, 2 Johnson's Ch. 27; 3 Bro. Ch. R. 340; 1 Madd 290; *Coffrey v. Darby*, 6 Ves. 497." (Italics added.)

The *Taylor v. Benham* case was strongly urged in Respondent Darrow's Brief before the Court of Appeals and the language from the Opinion of this Court, which is set out above, was quoted in that Brief. The Court of Appeals in its Opinion adopts as the *law of this case* the Rule that—

"A Receiver is liable to surcharge only when guilty of fraud or supine negligence equivalent to fraud."

The Court of Appeals particularly cites the *Taylor v. Benham* case and says that the doctrine above announced "comes directly from the Opinion of the Supreme Court" in that case.

The Gist of This Case—the Necessity of Proving “Supine Negligence.”

Under the rule of this Court, concerning surcharging Trustees, as laid down in the *Taylor v. Benham* case (and also as announced in several other leading cases from other States and from England which we shall discuss hereafter) the opposition here must somehow convince this Court that the Respondent Darrow has been guilty of “supine negligence,” with respect to his employment of Kulp and Johnson. Unless they are successful in that effort their attack upon him would inevitably fail regardless of any other issues or questions in this case.

That point seems to be specifically admitted by the Brief for Petitioners filed herein (after Certiorari granted) since it is there stated (p. 19), after discussing what Counsel choose to call the “repeated breaches of trust” of his employees: “He exhibited supine negligence” (in his relations with those employees.) While the Brief of S. E. C. filed herein (after Certiorari granted) does not specifically use the term “supine negligence” it does charge him (p. 12) with a “flagrant abuse of his fiduciary responsibilities”. That language seems to impute the same guilt and convey the same meaning.

The Court of Appeals Absolves Darrow of “Supine Negligence.”

In view of the effort of the opposition to convict Darrow of what they call “supine negligence” in this case, it is important to note that the Court of Appeals considered that point at some length and absolved Darrow of any guilt in that particular. That Court, we have seen, adopted the language of this Court in the *Taylor v. Ben-*

ham case; that a Trustee must be guilty of "very supine negligence or willful default" before the Court can surcharge the Trustee for alleged fraudulent or disloyal acts and doings of his employees. In view of the fact that the Court of Appeals, after a full review of the facts, reversed the surcharge against Darrow, it must be assumed that the Court of Appeals found and determined that Darrow could not be charged with that type of guilt and that type of negligence under all the facts and circumstances shown by the Record. We believe that determination is sound and correct and that it should be sustained by this Court.

Chancellor Kent's Views.

This Court in the above quotation from the case of *Taylor v. Benham* particularly cites and relies upon the New York case of *Osgood v. Franklin*, 2 Johnson's Ch. 27, decided by Chancellor Kent. That case involved an effort to surcharge a Trustee with losses where it was claimed that certain lands had been fraudulently sold to relatives of the Trustee, and at an inadequate price. The evidence showed that the Trustee's relatives were directly involved in the purchase, and further that the price was below the general market. Accordingly the guilt of the Trustee's relatives in that case was grave and serious, and very different from the charge made against Darrow in this case. Nevertheless, Chancellor Kent refused to surcharge the Trustee and laid down the applicable doctrine in such cases as follows:

"I think upon the whole that would be too rigorous a conclusion. A Court of Equity according to Palmer v. Jones (1 Vern. 144, 23 Full English Reprint 376) never charges a Trustee with imaginary values nor with more than he has received, unless the proof be very strong of supine negligence. Lord Thurlow said in Bypus v. Smith (1 Ves. Jr., 189, 30 Full English Re-

print 294) *'it must amount to a case of willful default.'*" (Italics added.)

We respectfully submit that the doctrine of this Court above quoted from *Taylor v. Benham*—and likewise the language of Chancellor Kent in *Osgood v. Franklin* ante—announce what Justice Brandeis in the *Howard* case has called "the Common Law" concerning surcharging Trustees. Under that doctrine, we submit, Darrow cannot be surcharged by this Court.

Justice Field on Surcharging Trustees.

The late Justice Stephen J. Field was a member of this Court from 1863 to 1897. While he was a member of the Supreme Court of California he took part in the decision of the case of *Ellig v. Naglee*, 9 Cal. 684, decided in 1858. In that case (the Opinion is by Judge Burnett, "concurring in by Justice Field") the Court had before it the question of surcharging a Trustee who had been carrying on large and important business transactions comparable to those of Darrow in this case. In its Opinion the Court made an observation that is equally pertinent to Darrow's situation when it said, with respect to the Trustee:

"Their administration of the trust estate considered as a whole was beneficial to the property and greatly increased its productive value." (Italics added.)

In laying down the principles applicable to surcharging Trustees the California Court said:

"It is a general principle applicable to Trustees that when they act in good faith and without any selfish motive they are entitled to be treated by a Court of Equity with liberality and indulgence." (Italics added.)

Here is a fundamental rule with respect to the liberal and indulgent attitude courts of equity always take toward Trustees who are not personally guilty, which is clearly reflected in some of the other decisions we shall discuss in this Brief and particularly in the English cases. The California Court continues:

"Trustees act for the benefit of others and not for themselves, and the fair exercise of their judgments should be a protection to them. Very supine negligence or willful default will render them liable; but to make them liable for mere errors of judgment would tend to discourage good and prudent men from undertaking any trust."³ Citing *Taylor v. Benham*, 5 How. 283.

The above language about "supine negligence" and "willful default" used by the California Court in 1858 was taken verbatim from the language of this Court in the *Taylor v. Benham* case which had been decided 12 years earlier.

Darrow Comes Within The Rule Announced in the Above California Case.

The record clearly establishes that Darrow, during the eight years of his administration as Trustee, at all times acted with the best of motives, with no selfish interest and for what he considered in his judgment to be in the best interests of the two Trusts. He made no personal profit as a result of his purchases of securities for the Trusts and never had any thought of doing so. We submit when these facts, together with the great benefits accruing to the

³ Later in this Brief we shall discuss the drastic rule contended for by the opposition in this case and compare it to the above language of the California Court to the effect that such a drastic rule "would tend to discourage good and prudent men from undertaking any trust". At the same place we will point out that this idea that the Courts must be "liberal and indulgent" with Trustees in surcharge matters originated with the language of Lord Hardwicke in the case of *ex parte Belchier*, 27 Full English Reprint 144 discussed later in this Brief.

Trusts, are considered he should not be punished by a surcharge, or penalized in any other manner. He very definitely comes within the rule laid down by the California Court in the case above cited.

A Leading Pennsylvania Case.

We will conclude this Point I of our Argument by a discussion of a leading Pennsylvania case, *Seamans v. United Lumber Company*, 281 Pa. 404, 126 Atl. 776, decided by the Supreme Court of Pennsylvania in 1924. In that case large quantities of lumber had been sold by the Receivers through a brokerage concern, in which one of the Receivers was personally interested. It will be seen, therefore, that the element of personal guilt of the Trustee was present in that case—an important and controlling fact which is entirely lacking here as far as Darrow is concerned.

In that case the Receivers had filed an account, in which they took credit for the commissions paid certain lumber brokers, and the creditors of the Estate insisted that the Receivers be surcharged for such commissions. In denying that contention the Pennsylvania Court said:

"While courts will scrutinize with great care the conduct of officers appointed by them, who are at the same time interested in another company with which the delinquent deals, the mere fact that a relationship exists does not ordinarily condemn their acts, *particularly those done in good faith*. To reach such conclusions there should be some evidence in addition to the connection, to stamp the transactions with unfairness. No great amount of evidence is necessary, but it should appear that the *cestuis que trustent* suffered some pecuniary loss, traceable to a conflict of interest. We have testimony as to the fairness of sales and reasonableness of the agent's charge; the commissions paid the brokers must be sustained." (Italics added.)

The above quotation from the Pennsylvania Court, we say, lays down the sound and modern doctrine concerning surcharging trustees for alleged wrongdoings of their employees and holds that the courts will never surcharge the trustee for the acts and doings of the trustee himself which have been performed "in good faith." As we shall see later on in this Brief, that is the modern law of England which has recently been announced by the so-called Trustee Act of 1925 enacted by Parliament and discussed later on in this Brief.

Summary as to the Above Point I.

In our Argument above under Point I, we have endeavored to analyze the leading case of *Taylor v. Benham*, 5 How. 233, decided by this Court in 1846; also the case of *Osgood v. Franklin*, 2 Johnson's Ch. 27, decided in New York by Chancellor Kent and cited in this Court in the *Taylor v. Benham* decision; also the case from California of *Ellis v. Naglee*, 9 Calif. 684, decided by that Court when Justice Stephen J. Field, later a member of this Court, was on the California Court; and finally the modern Pennsylvania case of *Seamans v. United Lumber Co.*, 281 Pa. 404, 126 Atl. 776. It would be comparatively easy to extend the Argument of this Point I further and at considerable length. But we think the foregoing cases indicate the general principles of the law in America where it is urged that trustees be surcharged for the alleged wrongful conduct of their employees. In any event, we leave this Point I with the discussion above given:

II.

THE MODERN FEDERAL COURT DECISIONS HAVE CONSISTENTLY FOLLOWED A LIBERAL POLICY SO FAR AS SURCHARGING TRUSTEES IN BANKRUPTCY IS CONCERNED. THEY HAVE INSISTED UPON APPLYING THE GENERAL DOCTRINE OF TAYLOR v. BENHAM ANTE AND HOLD THAT THE TRUSTEE CANNOT BE SURCHARGED FOR THE DISLOYALTY OR WRONGFUL ACTS OF HIS EMPLOYEES WHERE HE HAD NO "PERSONAL FAULT", AND WHERE HE COULD NOT BE CHARGED WITH "SUPINE NEGLIGENCE". WHEN THAT MODERN TEST IS APPLIED IN THIS CASE IT CLEARLY ABSOLVES DARROW FROM ANY SURCHARGE WHATEVER.

**The Application of Well-Known Principles,
The Nub of This Case.**

On this Appeal, as so often happens when lawyers disagree, it is the *application* of well-known principles of law to the facts and circumstances in the Record, that constitutes the *nub* of this case. The general rules of law, concerning surcharging Trustees, have long been settled both in America and in England. The question here is how the facts and circumstances shall be analyzed and appraised, in the light of those established legal principles.

This Court has recently recognized the thought above suggested and has held that the problem of determining the liability of a fiduciary in a Bankruptcy Proceeding is not so much a matter of law as it is a question of fact. The case in which this Court so rules, *S.E.C. v. Chenery Corp.*, 318 U. S. 80 (1943) is so pertinent and helpful here

that it deserves particular attention. In that case in a Reorganization Proceeding, the S.E.C. had held that certain blocks of preferred stock, which had been acquired at a depreciated price by some of the officers and directors of one of the companies, would not be permitted to participate in full with other preferred stock, because the S.E.C. determined that the directors and officers in question had made use of their "unique advantage" to buy the stock by virtue of being members of one of the Reorganization Committees. In reversing that ruling of the S.E.C. this Court said:

"We completely agree with the Commission that Officers and Directors who manage holding companies in process of reorganization * * * occupy a position of trust. We reject a lax view of fiduciary obligations and insist upon their scrupulous observance" (Citing cases).

Of course that doctrine about a "lax view of fiduciary obligations" is fully agreed to and accepted in this case by Darrow and his Counsel. But this Court then goes on to point out that the real problem involved (the *nub* of the case as we have said) is the interpretation and application of those principles as applied to the facts and circumstances of the particular case. On that point this Court said:

"But to say that a man is a fiduciary only begins analysis; it gives direction to further inquiry. To whom is he a fiduciary? What obligations does he owe as a fiduciary? In what respect has he failed to discharge these obligations? And what are the consequences of his deviation from duty?"

In the *Chenery* case the S.E.C. urged that it was "merely applying the broad equitable principles" which it had deduced from the decisions that it urged upon the Court. That is of course exactly what the S.E.C. is attempting to do in the case at bar. This Court brushed aside that

"broad equitable principles" assertion of the S.E.C. when it said:

"The cases upon which the Commission relies do not establish principles of Law and Equity which in themselves are sufficient to sustain its Order. . . ."

"Determination of what is fair and equitable calls for the application of ethical standards to particular sets of facts. But these standards are not static."

The "Stern Rule" of the S.E.C. Rejected.

In concluding its Opinion this Court in the *Chenery* case refused to approve and adopt what it called the "stern rule" urged by the S.E.C. In commenting on the contentions of that Agency in that respect the Court said:

"It contends that these considerations warrant the stern rule applied in this case since the Commission 'has dealt extensively with corporate reorganizations, both under the Act', etc.

That language about the "stern rule" urged by the S.E.C. in the *Chenery* case is very pertinent to the contentions of the S.E.C. and of the Petitioners in the case at bar. We submit that this Court should not go beyond the force and effect of all of the decisions in the past, so far as surcharging Bankruptcy Trustees is concerned, and that it should deny and reject the "stern rule" which the S.E.C. and the Petitioners insist should be applied in surcharging Darrow in this case.

An Outstanding Modern Federal Case.

We come now to a consideration of the modern Federal decisions with respect to surcharging Bankruptcy Trustees. The outstanding case in the Books on this point, we believe, is *In re Marcus*, 67 F. (2d) 1008, where the Court

of Appeals for the 3rd Circuit affirmed the decision of the trial court reported in 2 Fed. Supp. 524, in a summary Opinion. The facts in the *Marcus* case and the actual issues involved are so closely parallel to the *Darrow* case that they deserve close and careful analysis. In that case a Bankruptcy Receiver was operating a chain of grocery stores in the City of Pittsburgh and like *Darrow*, in the case at bar, the administration of the Trust was complicated and involved on its *business* side. Because of the necessities of the situation the Receiver in the *Marcus* case (without any court authority whatever) proceeded to retain as part-time employees two of the Marcus brothers, whose questionable dealings in the past had brought the stores into bankruptcy. The evidence showed that during the Receivership these two employees secretly stole \$31,000 worth of merchandise and \$53,000 in cash, while they were helping to operate the business. On that state of facts the Referee in Bankruptcy had surcharged the Receiver for both of those items—a total of \$84,000.00. The District Court (Judge Schoonmaker) reversed the decision of the Referee and held that the Receiver could not be surcharged in any respect whatever under the facts and circumstances of the case. In so holding Judge Schoonmaker said (2 Fed. Supp. 524):

: "We take it to be elementary law that a Receiver will not be personally liable for losses sustained in the administration of an estate where he exercises good faith and ordinary care and prudence; *nor will he be held for losses resulting by reason of the negligence of his employees without personal fault on his part in matters necessarily or properly committed to them in the management of the trust property.*

"The Pennsylvania Courts I believe lay down the correct rule, i. e., *that a receiver is liable to surcharge only when guilty of fraud or supine negligence equivalent to fraud.*" (Italics added.)

It is interesting to note that the District Court's language, about "personal fault" and about "supine negligence" comes directly from the Opinion of this Court in the case of *Taylor v. Benham*, 5 How. 233 already discussed.

It will be noted that in the *Marcus* case there was a heavy loss to the creditors, and in spite of that fact the Federal Court refused to surcharge the Receiver. In the *Darrow* case, as we have shown, no loss whatever was sustained by the two Bankrupt Estates, but on the contrary very large benefits accrued as a result of the transactions of Darrow with his part-time employees.

Employment of Former Personnel the "Usual Procedure."

In its Opinion in the *Marcus* case the District Court points out in sensible and convincing fashion that it was the traditional practice and "usual procedure" in Bankruptcy Proceedings to employ the experienced personnel of the Bankrupt Estate, where complicated business transactions had to be carried out. In approving that traditional policy and laying down a doctrine that clearly would commend Darrow for his employment of Kulp and Miss Johnson in this case, Judge Schoonmaker said:

"In this case the counsel for the petitioning creditors . . . advised the Receiver to continue the employment of the Marcus Brothers and other regular employees in carrying on the business. . . . *Such employment of the bankrupts in running a business by a Receiver was the usual and ordinary course of procedure in bankruptcy cases in this District.* . . . (Italics added.)

"The Referee . . . rests his finding of negligence on the part of the Receiver on the charge that the Receiver failed to exercise proper supervision of the operation of the business After a careful review of the evidence we are not convinced that these charges of neglect have been sustained."

**Surcharging a Trustee to be Determined
"From the Whole Case."**

We conclude our discussion of the *Marcus* case by a short consideration of the point that was obviously the deciding factor in the decision of the District Court, that in justice and equity no surcharge could be made against the Receiver in that case. That deciding factor is the principle that the question of surcharging a Trustee must be determined "from the whole case," as the facts and circumstances are measured and appraised by a Court of Equity. The language of the Court in the *Marcus* case is most pertinent to Darrow's conduct in the case at bar, as shown by the following statement:

"From the whole case it appears to us that the Receiver exercised the utmost good faith in the conduct of the trust, and exercised all of the care and prudence in the management thereof, which could properly be expected under the circumstances. We cannot find that there was any lack of proper supervision. . . . We therefore conclude that there was no such neglect due to lack of proper supervision which would justify us in charging against the Receiver the total losses due to the thefts of the Marcus group." (Italics added.)

As already indicated the Court of Appeals for the 3rd Circuit affirmed Judge Schoonmaker (67 Fed. (2) 1008) and said in a brief Opinion:

"In this bankruptcy case the Referee surcharged the Trustee for alleged negligence in administering the bankrupt's estate. . . . Judge Schoonmaker reversed the action of the Referee and . . . fully discussed every phase of the case. . . . We find ourselves in accord with his action. . . . We avoid needless re-statement of what the Judge has already once said and limit ourselves to affirming the Court's Order."

It should here be stated that this Court denied Certiorari in the *Marcus* case in 291 U. S. 679, thereby refusing to disturb the generous rule with respect to surcharging a Bankruptcy Receiver, which had been applied in that case.

It should further be noted here that the Court of Appeals in its Opinion relied heavily upon the *Marcus* case and adopted the language of that case as the rule of law to be applied so far as surcharging Darrow is concerned.

Further Federal Decisions on the Point.

In Respondent Darrow's Brief before the Court of Appeals certain additional Federal Court decisions were argued at some length. It is obvious that these Federal cases also impressed that Court because they are referred to and quoted from and approved in its Opinion. These cases will be discussed here in summary fashion.

A case that is strongly relied on by the Court of Appeals is *Evans v. Williams*, 276 Fed. 650. That also was a Bankruptcy case in which it was insisted that the Trustee should be subjected to a surcharge "for losses incurred in the operation of the business." The matter was referred to a Referee who after an extended Hearing recommended a surcharge against the Trustee for \$11,759.51. The District Court affirmed that surcharge but it was reversed by the Court of Appeals which said in its Opinion:

"The Receiver could not, and of course was not expected to manage a business of this magnitude, without expert assistance. He did employ a competent and experienced man as general manager, and another competent and experienced man as bookkeeper. Had he failed to do this he would have been guilty of gross negligence. While it is suggested that these men purposely falsified the accounts and delivered to him false

inventories, nevertheless it is not contended that the Receiver had any reason to believe that the inventories and accounts were not correct, * * *

It will be noted that in the *Evans* case there was an outright loss to the Estate of a substantial amount due to the speculations of the Receiver's employees. As we have shown in our Statement of the Case the contrary is true in the case at bar, since Darrow's use of these employees and their experience in the premises resulted in very large benefits and profits to the creditors of both Federal and National. Yet in spite of the heavy loss to the creditors in the *Evans* case, the Court refused to surcharge the Receiver. In adopting the same rule, that the surcharge must be determined "from the whole case," which was so properly laid down in the *Marcus* case *ante*, the Court said in the *Evans* case:

"Taking all these facts into consideration, * * * the court has reached the conclusion that his failure (to discover the falsity of the employee's report) was not such negligence as would entitle the creditors to recover from him personally the losses sustained. * * * Therefore the judgment of the district court is reversed."

Another case that should be mentioned here is *In Re Berger Sausage Co.*, 129 F. (2d) 62, decided by the Court of Appeals for the 7th Circuit. In that case it again appeared that "very large losses" had been incurred by the Trustee in the operation of the business as a going concern. It further appeared from the facts that "the Trustee's methods of bookkeeping were not of the best"; that one of his employees "during his employment" had engaged in a side line business, and had "opened up a retail outlet with money borrowed" from the Trustee himself. As the Court of Appeals below pointed out in the case at bar

there was much stronger reason for surcharging the Trustee in the *Sausage Company* case than for surcharging Darrow. Nevertheless the District Court in the *Sausage Company* case refused to surcharge the Trustee and that judgment was affirmed by the Court of Appeals. In so holding the Court used the following language:

"The general rule is that receivers are not chargeable with losses resulting from their operation of the business, although it is their duty to exercise diligence in selecting competent employees and informing themselves as to the profits and losses from such operation. See Remington on Bankruptcy, 4th Ed., Secs. 446, 2662 and 2965. The degree of diligence exercised, we think, is a matter for the bankruptcy court to determine." (from the facts of each case.)

Another pertinent case urged in Respondent Darrow's Brief in the Court of Appeals and cited by that Court in its Opinion below is *In re Portex Oil Co.*, 43 Fed. Supp. 859. In that case, as in the case at bar, objections were filed to the final account of the Receivers in a Bankruptcy Proceeding. An Application was made to surcharge him for monies lost to the Bankrupt Estate through the conduct of an untrustworthy employee. The matter was referred to a Master who took testimony and finally made a Report recommending that the surcharge be denied. The Master's Report was affirmed by the District Court. The facts in the *Portex Oil* case showed that the Receivers had employed one of the former employees of the Bankrupt. The proof showed that this employee was "guilty of defalcations" to a substantial amount. But in that case the Court found that there was "not one suggestion or scintilla of evidence" tending to involve the Receivers. In denying the claim for a surcharge in the *Portex Oil* case the District Court used language that is clearly pertinent to the case at bar.

"The amounts so abstracted cannot be charged against the Receivers. It has always been recognized as a principle that one serving in a fiduciary capacity *must act in the utmost good faith*. But when he has performed this obligation, he is not liable if he exercises his best judgment. Specifically, a fiduciary is not held liable for defalcations of servants and employees whom he has selected in good faith. This doctrine is applied among others to Receivers. Here the Receivers are absolved from liability." (Italics added.)

We trust that the foregoing summary of the principles of law concerning surcharging Trustees in Bankruptcy which have been announced by the modern Federal Courts will be helpful in the consideration of the present Appeal.

III.

THE SIGNIFICANT ENGLISH CASES, ETC. ON SURCHARGING TRUSTEES.

This Court and the English Cases.

This Court, in the leading case of *Taylor v. Benham*, 5 How. 233 (already discussed in this Brief), clearly shows that the Law of England concerning surcharging trustees has been adopted as the general law of this country on the subject. The point about the "common law" of England being the law of this country concerning the liability of trustees is again announced by this Court in the modern case of *Willoughby v. Howard*, 302 U. S. 445 (also discussed *ante* in this Brief). The American Text Writers and Encyclopedias constantly cite and quote from the early English cases concerning surcharging trustees. Accordingly, we find the Court of Appeals, in its opinion below, strongly relying on the English authorities and decisions in its

ruling absolving Darrow from a surcharge in the case at bar. It should therefore be pertinent and helpful here to give a short discussion of the leading English cases and authorities on the point.

The Origin of the Doctrine of Surcharge—1682.

This Court, in the leading case of *Taylor v. Benham*, cited above, clearly indicates that the law concerning surcharging trustees goes back to the early English cases and cites several of those English cases, including the case of *Palmer v. Jones*, 1 Vernon 144, decided by the High Court of Chancery in 1682. On examining that case, it will be found to be a proceeding to surcharge a trustee where he was apparently not as diligent as he might have been in his management of the estate, but where the loss occurred "without his willful default". In refusing to make the surcharge which was asked for, the Lord Chancellor said:

"Very supine negligence might indeed in some cases charge a trustee with more than he had received * * * but then the proof must be very strong."

Here, then, nearly 300 years ago in England, we find the origin of the principle that a trustee will not be surcharged, where he is without personal fault, unless there is evidence of "supine negligence".

The Leading Case of *Ex Parte Belchier*.

No appraisal or consideration of the law of surcharging a bankruptcy trustee for the neglect or derelictions of an employee can be adequately made without a study of the early English case of *Ex parte Belchier*, decided by Lord Hardwick in the High Court of Chancery in 1754 (1 Amb.

218; 27 Full English Reprint 144). That case was strongly urged by us in Respondent Darrow's Brief before the Court of Appeals, and the case is cited and relied upon by that Court in its opinion. In that case, the English court had before it the question of the liability of an Assignee in bankruptcy who had employed a broker to sell a substantial quantity of tobacco belonging to the bankrupt estate. The sale was made and the purchase price was paid to the broker, who shortly thereafter died insolvent. It was claimed that the Assignee "ought to bear the loss". It was shown that the broker had received the large sum of 924 pounds but had paid over only 439 pounds. The Assignee, in his account, charged himself only with the actual amount of monies received, the loss being 485 pounds. The trial court held the Assignee liable for the full amount of the money received by his employee, including the amount lost. Lord Hardwick, then Lord Chancellor of England, reversed that holding and said:

"If Mrs. Parsons (the Assignee) is charged in this case, no man in his senses would act as Assignee in Bankruptcy. This Court has laid down a rule with regard to the transactions of Assignees, and more so of Trustees, so as not to *strike terror into mankind* acting for the benefit of others and not for their own.

"... Where Trustees act by other hands, either from necessity or conformable to the common usage of mankind, they are not answerable for losses." (Italics added.)

"Striking Terror" In Bankruptcy Trustees.

It will be noted that the reason Lord Hardwick gives for not applying a stern and drastic rule of liability, is the unwillingness of courts of equity to "strike terror" into the minds of persons who might act as such trustees. In the present case, it might well be asked what Darrow,

or any other sensible man, would do when asked by a bankruptcy court to become Trustee in Bankruptcy, if he were confronted with the possibility of being surcharged in the heavy sum of more than \$43,000.00, for doing exactly what his judgment and conscience told him to do. He wanted to get skilled and experienced assistants in managing the complicated affairs of Federal and National, and the only place he could turn for such skilled assistance was to Kulp and Miss Johnson. Because he exercised his judgment in determining to employ those persons, the SEC and the Petitioners here are asking this Court to assess a heavy penalty against him, where no actual loss whatever has occurred to the estates.

The same idea about the effect of such a stern and drastic doctrine of law on businessmen who might be called upon to act as trustees, is emphasized, as we have seen, in the California case of *Ellig v. Naglee*, 9 Cal. 684, already discussed, where Justice Field, later of this Court, concurred in the opinion. The opinion in that California case states that "very supine negligence or wilful default" is necessary to surcharge a trustee, and then says:

"But to make them liable for mere errors in judgment would tend to discourage good and prudent men from undertaking any trust."

The rule of law which Petitioners, aided by the SEC, seek to have this Court establish would, in the language of Lord Hardwick in the *Belchier* case, "strike terror" in the hearts of trustees in bankruptcy. We submit that this would result in such trustees doing only the minimum they are obliged to do, in the administration of Bankruptcy estates. They would refrain from exerting any unusual effort to benefit such estates for fear of being punished or penalized. Darrow adopted the active policy of doing

everything which in his judgment would benefit the estates he was administering. As a result of such efforts in the acquisition of securities of the subsidiary companies, the bonded indebtedness of the subsidiaries has been substantially reduced, and in addition, the two Trusts, National and Federal, have made large profits. Had the rule now contended for by Petitioners and the SEC been established as the law at the time of his appointment, Darrow would never have dared to take advantage of the opportunity he had through Johnson and Kulp to benefit the Estates.

The Modern English Case of *Speight v. Gaunt*.

In the modern English case of *Speight v. Gaunt*, 9 A. C. 1, the trial court had surcharged a trustee who had employed a stockbroker to invest the funds of the trust, and the broker stole the funds and later went bankrupt. It was proved that the broker's firm had acted for the Testator personally, before his death and before the trust came into being—a fact somewhat similar to the circumstance that Kulp and Miss Johnson, in this case, had acted for the prior trustee Andresen. The Court of Chancery (22 Ch. 2027) reversed that finding of the trial court and held that the trustee could not be surcharged under the circumstances of the case. The House of Lords, in the cited decision, affirmed the Court of Chancery and again absolved the trustee. In so doing, the Lord Chancellor said:

“In the early case of *Ex parte Belchier* (1 Amb. 218) before Lord Hardwick, it was determined that . . . when according to the usual and regular course of business . . . and without any misconduct or default on the part of the trustee, a loss takes place, through any fraud or neglect of the agents employed, the trustees are not liable to make good such loss. That authority has ever since been followed.”

It will be noted that the doctrine goes straight back to Lord Hardwick's language in the *Ex parte Belchier* case. It will also be noted that the language given above from the *Speight v. Gaunt* case is quoted in the opinion of the Court of Appeals in this case (R. 636).

In the House of Lords, Lord Fitzgerald laid down the doctrine of law applicable as follows:

"I accept it as settled law that although a trustee cannot delegate to others the confidence reposed in himself, nevertheless he may, in the administration of the trust, avail himself of the agency of third parties such as bankers, brokers or others, if he does so from moral necessity or in the regular course of business. If a loss to the trust fund should be occasioned thereby, the trustee will be exonerated unless some negligence or default of his has led to that result."

Necessity of an Actual "Loss" for a Surcharge.

It will be noted that in the *Belchier* case and the *Speight v. Gaunt* case there existed substantial cash losses to the trust estate in question. It is obvious, therefore, that this factor of loss is an essential element in any surcharge of a trustee for the acts of his employees.

Parliament Recognizes the Liberal Rule Concerning Surcharging Trustees.

It will be of interest to this Court in the case at bar, we believe, to know that the English Parliament has recognized the liberal rule of not surcharging a Trustee for acts of his employees where the Trustee himself is personally without fault and has acted in "good faith". Here indeed is a weather vane of the modern law which we believe

may be of interest to the Courts of Equity in the United States.

The English "Trustee Act" of 1925 (15 Geo. V, c. 18; Complete Statutes of England, Vol. 20, p. 114) contains the following pertinent provisions with respect to the power of a Trustee to employ agents etc.:

"Sec. 23. *Power to Employ Agents.* Trustees, or personal representatives, may, instead of acting personally, employ and pay an agent * * * to transact any business or do any act required to be transacted or done in execution of the Trust * * * and shall not be responsible for the default of such agent if employed in good faith."

We have said above that this provision constitutes a recognition by the English Parliament of the modern tendency of the law to treat Trustees with "the utmost consideration" where questions of surcharge are involved. That Section and that language of the English Act of 1925 was construed favorably and liberally toward Trustees in the case of *In re Vickery* [1931] 1 Ch. 572. In that case the Trustee under a will had employed a solicitor to assist him and the solicitor had absconded with a substantial amount of the funds of the Trust, which had come into his hands. There was conflicting evidence in the case as to whether the Trustee had been warned of the bad repute of the solicitor, and had been asked to change solicitors before the actual defalcation occurred. Under the circumstances of the case the Chancery Division refused to hold the Trustee liable for the loss and particularly cited the generous provision of the English Act of 1925 above quoted

* In the English case of *In re Weal*, 42 Ch. D. 674 decided by the English Court of Chancery in 1889, in denying a surcharge which was sought against the Trustee it was said: "Trustees deserve and receive the utmost consideration at the hands of the court * * * and they are entitled to generous treatment."

relieving a Trustee of liability for the default of an employee where the Trustee acted in "good faith". In so doing the English Court said in construing the 1925 Act:

"It is hardly too much to say that it [Sec. 23] revolutionizes the position of a trustee or an executor so far as regards the employment of agents. * * * No doubt he should use his discretion in selecting an agent, and should employ him only to do acts within the scope of the usual business of the agent; but, as will be seen, a question arises whether even in these respects he is personally liable for loss due to the employment of the agent unless he has been guilty of willful default."

After that discussion about the English Act *per se* the English court takes up the general question of the liability of a Trustee to be surcharged and says:

"* * * A person is not guilty of willful neglect or default unless he is conscious that in doing the act which is complained of, or in omitting to do the act which it is said he ought to have done, he is committing a breach of his duty, or is recklessly careless whether it is a breach of duty or not. * * * On the whole I have come to the conclusion that the defendant was on any view of the facts guilty only of an error of judgment, and this, in the case of a loss occasioned by the defalcation of a solicitor, does not amount to willful default."

IV.

THERE WAS NO LOSS TO ANY PERSON PROVED BEFORE THE DISTRICT COURT AS A BASIS FOR A SURCHARGE AGAINST DARROW. MOREOVER, THERE ARE NO PRIVATE INTERESTS OR PRIVATE RIGHTS WHATEVER INVOLVED IN THIS APPEAL. THE PROCEEDING IN THIS COURT IS, THEREFORE, A PURELY ABSTRACT AND THEORETICAL CONTROVERSY UPON WHICH THIS COURT SHOULD NOT BE CALLED UPON TO PASS.

**The Burden of Establishing a Surcharge by Proof Was
Upon the Petitioners.**

It has long been the established law in equity that where a surcharge is alleged against a trustee's account, the burden of establishing the basis for such surcharge by adequate proof is upon the parties seeking such surcharge. This well established doctrine has again been recently announced by Judge Learned Hand in *Berner v. Equitable Office Building Corp.*, 175 Fed. 2d 218 (C. A. 2, 1949) where that jurist said in a case cited by Petitioners in their Brief (p. 22):

"It was the rule in equity, when an agent or fiduciary filed his accounts, and the principal or beneficiary had either 'falsified' the credits, or 'surcharged' the receipts; that the agent or fiduciary had the burden of establishing the credits, and the principal or beneficiary the burden of establishing the surcharges." (Italics added.)

The Court will note that the Petitioners in their Brief (pp. 22 and 23) cite this decision of Judge Hand for the following proposition¹¹ of law which they insert in their Brief:

"A trustee is always held to the highest standard of fidelity and the burden should rest upon him to establish clearly that he has done so."

We call this Court's attention to the patent fact that the above quotation in Petitioner's Brief is the exact opposite of the doctrine concerning the *burden in surcharge matters* which is laid down by Judge Hand in that very case.

Many other cases in the books could be given to support the rule with respect to the burden of proof in establishing a surcharge against trustees, as laid down by Judge Hand, but we think it is unnecessary for us to cite any further cases on that point.

An Abstract and Moot Case Here.

The Record in this case, we submit, clearly establishes the fact that there are no private interests or private rights whatever involved in this proceeding. We have discussed this point at some length in our Statement of the Case in this Brief, and we further urged the point in the two Briefs filed on behalf of Respondent Darrow, before Certiorari was allowed. It is, therefore, apparent that nothing is involved here but an abstract and moot question of law. No loss to any of the creditors of either of these Trusts is charged in the Petition for Certiorari in this case. Nor is this point argued in any of the Briefs which have been filed by the opposition.*

The Master, in his report, suggests a loss *arguendo* (R. 554) in criticizing Darrow for his relations with these part-

* It is true that in the Petitioner's Brief (p. 9) one of the "errors" charged against the Court of Appeals is:

"9. In failing to find that the Trust Estates suffered losses."

The Petitioners do not argue that there were any losses. On the contrary they tacitly admit (Br. 25) these Estates "suffered no loss in the transactions involved."

time employees. The Master says that Darrow's employment of them "allowed their infidelity to inflict direct financial loss upon the Trusts in many instances." This statement of the Master, however, is entirely unsupported by any evidence whatever in the Record. There was, we repeat, no loss suffered by anybody because of the services of these two part-time employees.

It is a rule firmly established in the law that courts will not pass upon moot or abstract controversies. This Court in *Mills v. Green*, 159 U. S. 651, said:

"The duty of this Court as of every other judicial tribunal, is to decide actual controversies * * * and not give opinions on moot questions or abstract propositions."

It is, we believe, unnecessary to cite other cases or authorities on that point.

We therefore urge that the Appeal be dismissed on that ground alone.

V.

THE INTERESTS OF PUBLIC POLICY ARE AGAINST THE STERN DOCTRINE OF SURCHARGING DARROW AS A BANKRUPTCY TRUSTEE AS DEMANDED IN THIS PROCEEDING. UNDER EVERY SOUND ASPECT OF PUBLIC POLICY, BANKRUPTCY TRUSTEES ARE TO BE TREATED JUSTLY AND LIBERALLY BY THE COURTS, EVEN FOR ALLEGED WRONGS AND DEFALCATIONS ETC. OF THEIR EMPLOYEES, UNLESS THE TRUSTEE HIMSELF HAS NOT ACTED IN "GOOD FAITH."

The Stern and Procrustean Doctrine Here Demanded.

In Greek mythology there was a celebrated highwayman of Attica named Procrustes who tied his victims upon an

iron bed of fixed length, and either cut off their legs or stretched them, as the case might be, to fit the length of the bed. It is from that legend we get the well-known metaphorical phrase of "Procrustean doctrine." That allegory, we say, applies exactly to the present proceeding, since it is a most unjust and indeed a stern and Procrustean doctrine which both the Petitioners and the SEC are asking this Court to impose upon Darrow.

During his eight years of Trusteeship Darrow successfully brought these two large Bankrupt Estates from a condition of utter insolvency to a situation where we say without fear of contradiction they can be discharged from bankruptcy with all debts paid. In addition the Record shows that the 27 subsidiary corporations of these two Trusts have all been successfully reorganized and put on their feet by Darrow's management during that period. All this was accomplished with the valuable assistance of the competent and skilled services of Miss Johnson and Kulp. Darrow testified that he could not have achieved that result without them, and the Master finds that "Darrow was correct in his estimation of [their] competence" (R. 552).

And yet because Darrow's fiduciary relationship with his part-time employees does not measure up to what the SEC believes should be the hard and stern measure of a Trustee's obligations in the premises they ask this Court to penalize Darrow in a sum that for him will probably cause his bankruptcy in turn. No cases whatever, as we have seen, are cited for that stern doctrine by the SEC or by the Petitioners but it is claimed merely that a Court of Equity can apply that Procrustean doctrine if it sees fit so to do, even without precedent. This Record shows (p. 350) that Darrow first learned there was any complaint about his administration of these Estates when the Regional

Director of the SEC in Chicago "called me [to his office] to insist upon my resignation."

The Regional Director's own version of that conference (in May or June 1943) is as follows:

"I believe Darrow came to my office at my request. I asked him to call at my office because in a matter of this kind, where we are going to file a Petition for removal, we felt we should advise him before we actually proceeded. At my conference with Mr. Darrow we discussed our proposed Petitions for his removal. He was in the office only a few minutes. He said he was sorry we were taking this position and he wanted to confer with his Counsel. That was the substance of the conversation." (R. 353.)

Here we find the inception of the war against Darrow which has been carried on by the SEC during all of the eight intervening years.

The Master's Report Finds Darrow Not "Derelict" In His Employment of Johnson and Kulp.

We believe this Court will be interested in some of the findings of the Master in his Report in this case which have been carefully omitted and ignored by both the Petitioners and the SEC. In his conclusions of Law (R. 552-3) the Master discusses the subject of "trading in underlying securities by employees of Trustee." The Master there says, among other things:

"Hindsight reveals that although Mr. Darrow was correct in his estimation of the competence of Miss Johnson and Kulp he erred seriously in his appraisal of their trustworthiness. However, in view of the information available to him at the time of the original hiring it cannot be said that he was derelict in this respect."

The Master in his Report at the same place discusses the duty of a Bankruptcy Trustee to "exercise proper and ade-

quate supervision" over his employees and he finds on this point: "Admittedly Mr. Darrow's conduct in this respect was satisfactory."

It is true that the Master's Report also contains certain disparaging statements about the Respondent with respect to the operations of his employees in the business of buying and selling "the underlying securities for profit." But that was one of the conditions which the employees had made as a part of their employment by the prior Trustee, Andresen and they had made that a condition also of their employment by Darrow as Trustee. The very large and substantial benefits which have accrued to these Estates could not have been achieved, as we have seen, without the able and competent services (as the Master finds) of these part-time employees. And they would never have consented to assisting Darrow in these matters unless he had permitted them to carry on their private securities business, including dealing in the underlying securities of the two Trusts.

We leave this question of Public Policy and the Draconian doctrine of the law of surcharging trustees demanded by the Petitioners and the SEC without further comment. We merely refer to the discussion about "striking terror" in the minds of Bankruptcy Trustees, found at pages 31 and 32 of this Brief.

VI.

THE CASES AND AUTHORITIES CITED BY PETITIONERS AND THEIR ARGUMENT BASED THEREON ARE NOT SENSIBLY APPLICABLE IN THE CASE AT BAR.

Petitioners' Point I.

Petitioners' Point I erroneously attempts to establish that the Court of Appeals committed reversible error on the

broad ground that it set aside the judgment of surcharge entered by the District Judge. The contention is made *arguendo* that there were "concurrent findings of fact of the Special Master and the District Judge." The Record in this case clearly disputes that contention because the District Judge made no "findings" whatever. He merely entered an extended Opinion of mixed fact and law entitled "Memorandum and Order" (R. 577 to 585).

Accordingly, we say that the whole basis of Petitioners' Argument that there were "concurrent findings of fact of the Special Master and the District Judge" is completely fallacious.

The Court of Appeals in reversing the District Court's judgment of surcharge specifically restricted its Opinion and ruling to a limited portion of the District Judge's order and "Memorandum" below. It is obvious from a reading of the Opinion of the Court of Appeals that it did not deal with any "findings" of the District Judge. And since the District Judge made no findings, the Court of Appeals was not concerned with the "clearly erroneous" provision of Rule 52(a) of the Federal Rules of Civil Procedure—as the Petitioners contend in their Brief (p. 12).

The decision of this Court in the case of *National Labor Relations Board v. Pittsburgh Steamship Company*, U. S. . . . , 71 S. Ct. 453, 95 L. Ed. 318, decided on February 26, 1951 seems to us to be decisive of the entire question presented under this point of Petitioners' Brief. In that case this Court said:

"This is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way. It is not for us to invite review by this Court of decisions turning solely on evaluation of testimony where on a conscientious consid-

eration of the entire record a Court of Appeals under the new dispensation finds the Board's order unsubstantiated. In such situations we should 'adhere to the usual rule of non-interference where conclusions of Circuit Courts of Appeals depend on appreciation of circumstances which admit of different interpretations.' "

We say, that there is no merit whatever in the proposition of law found under Point I of Petitioners' Argument (Br. p. 11).

Disregarding the question of the entire lack of merits of the Petitioners' proposition, set out under its Point I, we have read and analyzed the four cases cited by them in support of that proposition (Br. p. 12). Incidentally, we feel that it is not proper for counsel merely to cite what they assert are leading cases and then leave the analysis of those cases to opposing counsel. Nevertheless, we have gone into each of those cases and we find none of them to be applicable or helpful in any way.

Petitioners' Point II.

The remainder of Petitioners' Argument (Br. pp. 11 to 28) is devoted to a proposition set out in general terms at the top of page 13 of that Brief as follows:

"A TRUSTEE WHO PERMITS HIS CONFIDENTIAL EMPLOYEES TO TRADE IN THE SECURITIES OF HIS TRUST VIOLATES HIS FIDUCIARY DUTY AND SHOULD BE SURCHARGED FOR THE PROFITS REALIZED BY SUCH EMPLOYEES."

The first and complete answer to be made to that purported statement of the law concerning surcharging Trustees is that it utterly omits any suggestion of the doctrine of loss before a surcharge can be made. In the earlier

portions of this Brief we have, we believe, shown that there can never be a surcharge made against a Trustee unless a financial loss is charged and proved against the Trustee.

Cases Merely Cited and Not Discussed.

Here again we say Petitioners' Brief violates the rule of Advocacy to which we have already averted, in that they merely cite a large number of cases and leave the burden of analyzing those cases to the Court and opposing counsel. In that fashion Petitioners' Brief cites:

Magruder v. Drury, 235 U. S. 106 (1914).

Michaud v. Girod, 45 U. S. 503 (1846).

Jackson v. Smith, 254 U. S. 586 (1921).

In re The Van Sweringen Company, 119 F. (2) 231 (C.C.A. 6, 1941).

Irving Trust Co. v. Deutsch, 73 F. (2) 121 (C.C.A. 2, 1934).

Wooten v. Wooten, 151 F. (2) 147 (C.C.A. 10, 1945).

Fleishhacker v. Blum, 109 F. (2) 543 (C.C.A. 9, 1940).

Trice v. Comstock, 121 F. 620 (C.C.A. 8, 1903).

Governor Clinton Co., Inv. v. Knott, 120 F. (2) 149 (C.C.A. 2, 1941).

In re Frazin & Oppenheim, 181 Fed. 307 (C.C.A. 2, 1910).

Ex Parte Belchier, 1 Amb. 217; 27 Eng. Reprint 144.

Speight v. Gaunt (1883), 22 Ch. 727.

Evans v. Williams, 276 F. 650.

In re Marcus, 2 F. Supp. 524.

In re Portex Oil Co., 43 F Supp. 859, D. C., D. Ore. 1942.

In re Breger Kosher Sausage Co., 129 F. (2) 62.

Taylor v. Standard Gass & Electric Co., 306 U. S. 307.

Pepper v. Litton, 308 U. S. 295.

Woods v. City National Bank, 312 U. S. 262.

We will here dispose of these cases by saying that we have examined each one of them and found them entirely inapplicable to the case at Bar. Further than this, we do not feel called upon to discuss these cases in view of the peremptory manner in which they have been cited in Petitioners' Brief.

Petitioners' Inapplicable Cases.

Petitioners in their Brief (pp. 20-21) rely principally upon the case of *Carson, Pirie, Scott & Co. v. Turner*, 61 F. (2) 693 (C.C.A. 6, 1932). That case was cited and argued by the Petitioners in the Argument attached to their petition for Certiorari in this case and the same extended quotation there given (Petition for Certiorari pp. 13-14) is again repeated in Petitioners' Brief (p. 21). In our Brief for Respondent (pp. 15-16) in opposition to Petition for Certiorari, we point out effectively, as we believe, that the *Carson, Pirie, Scott* case is quite inapplicable to the facts here before the Court. In that case, as we have already pointed out, a Trustee in Bankruptcy had employed an auctioneer to sell the merchandise of a department store in Michigan and had paid him \$2,013.00 for that service. The creditors objected to the allowance of that sum to the auctioneer because it was shown that the auctioneer had stolen a large quantity of goods from the store while he was acting as the employee of the Trustee. The sordid and criminal acts of the auctioneer in that case and

the heavy loss suffered by the creditors in that case thoroughly justified the Court in charging the Trustee for the loss caused by his fraudulent and criminal employee.

Petitioners (Br. p. 22) next quote from the Opinion of Judge Learned Hand in *Berner v. Equitable Office Bldg. Corporation*, 175 F. (2) 218, 221 (C. A. 2, 1949). That case involved the question of the sale of assets of a bankrupt estate and the question was whether the sale had been so conducted as to get the best price for the property. It was because the Court held the Trustee had not carried out that duty that the Judge in that case used the language quoted in Petitioners' Brief. We have already called attention in Part IV of this Brief (p. 38 ante) to the unfairness of Petitioners' discussion in their Brief of the holding of Judge Hand in that case. Petitioners attempt (Br. p. 22) to tell this Court that "the burden should rest upon him" (the Trustee) in a proceeding to surcharge a Trustee. As we have pointed out in the part of our Brief to which we have just referred, Judge Hand holds the exact contrary to be true and that it is the "burden" of those seeking to surcharge the Trustee to make good their case against him.

Petitioners' Brief (p. 23) cites and quotes at length from the case of *American United Mutual Life Insurance Company v. Avon Park*, 311 U. S. 138, 146. That case also was cited by Petitioners in their Petition for Certiorari in this case.

The *Avon Park* case involved the composition under the Bankruptcy Act of the debts of a municipality in Florida. In that case it appeared that the "Fiscal Agent" of the City of Avon Park had made a private arrangement under which it stood to make a substantial profit out of the interest coupons which might come into its hands for interest

on bonds held by the bondholders. It was in connection with that obviously fraudulent and illegal "profit" that this Court used the language quoted in Petitioners' Brief (pp. 23-24). In view of the totally different facts involved and the gross impropriety disclosed in the *Avon Park* case on the part of the "Fiscal Agent" of the city, we say the rules of law announced in that case have no application whatever to the *Darrow* case.

The Petitioners' Brief (pp. 26 to 28) cites and discusses in a rather summary fashion three Illinois cases, namely: *Winger v. Chicago City Bank & Trust Co.*, 394 Ill. 94 (1946); *Pelcak v. Bartos*, 328 Ill. App. 435; *White v. Sherman*, 168 Ill. 589 (1897).

These cases again are all based on facts that are totally different from the facts in the *Darrow* case now before this Court, and are to be clearly distinguished from the case at Bar for that reason. We have read and examined these cases and we believe the Court will agree that they are not helpful or applicable upon the present Argument.

In its Conclusion the Petitioners' Brief again comes back to the case of *Meinhard v. Salmon*, 249 N. Y. 458—a case which has been cited in every Brief filed by the opposition, both in the Court of Appeals and in this Court. We have already pointed out that the *Meinhard v. Salmon* case had to do with a Bill in Equity where one of two real estate speculators in New York City attempted to charge his partner with fraudulent dealings by which the partner had made a substantial profit. It was in holding the partner a constructive Trustee that the New York Court of Equity laid down the doctrine from which the Petitioners make the garbled quotation which appears in their "Conclusion" (Br. p. 29). We think nothing more need be said to show the total lack of application of the *Meinhard v. Salmon* case to this *Darrow* case.

VII.

THE SEC ARGUMENT IN SUPPORT OF THE MOTION TO SUBSTITUTE

The Argument in the SEC Brief* (pp. 12 to 39) is divided into two points. Point I reads:

***"THE SUBSTITUTION OF THE PRESENT
TRUSTEES OF THE DEBTORS AS PETITION-
ERS IS PROPER."***

We respectfully submit that the SEC, as Amicus Curiae, has little if any lawful authority to support in this Court the Motion of Whitson and Schwartz to be substituted for Mosser as Petitioner in this case. Nevertheless, the SEC exerts great effort, and devotes thirteen pages of its Argument in support of that Motion. For the reasons suggested in Point VIII of Respondent's Brief and discussed hereafter, we do not propose to argue with the SEC over their

THE S.E.C. AS AMICUS CURIAE

* The S.E.C. is here solely as Amicus Curiae. The S.E.C. was not made a Party to the Petition for Certiorari in any way, and was not even mentioned in it as an interested Party, or otherwise. The records of the Clerk of this Court will further show that no "notice of the Filing of the Petition" (in accordance with Rule 38 of this Court concerning Review on Certiorari) was ever served on the S.E.C., and that the only Party here other than the Petitioners was and is the Respondent Darrow. The S.E.C. as a Government Agency first appeared in this case by filing its so-called "Memorandum—In Support of Petition," in January, 1951. That Memorandum made no claim whatever that the Agency was a Party, but was apparently filed under the former version of the Amicus Curiae Rule of this Court (Rule 27), which previously permitted any "Agency" of the United States to present an Amicus Curiae Brief, when "sponsored by the Solicitor General." But that Rule was stringently revised by this Court in 1949, and no longer gives that Amicus Curiae privilege to a statutory Governmental "Agency" (as distinguished from the Government itself), merely because its Brief is signed by the "Solicitor General."

It is, of course, entirely for this Court to grant or deny the S.E.C. the privilege of filing a Brief as Amicus Curiae in this Bankruptcy Appeal; although the statute (11 U.S.C. 608) forbids the S.E.C. to "appeal or file any petition for appeal" in this proceeding. But on that point we respectfully suggest that the intervention of the S.E.C. in this case has greatly burdened the Respondent Darrow in this litigation and has very substantially added to his attorneys' fees and printing costs.

right to support that Motion. We are content to leave that to this Court without further discussion.

VIII.

REPLY TO THE SEC ARGUMENT ON THE MERITS.

In its Argument on the merits (Br. pp. 25 to 39) the SEC contents itself by laying down one blunt statement of the law as the SEC would like to have it in the following words:

"IT WAS PROPER TO SURCHARGE THE BANKRUPTCY TRUSTEE FOR PROFITS REALIZED, WITH HIS KNOWLEDGE AND ASSISTANCE, BY HIS SUBORDINATES FROM TRADING IN SECURITIES OF THE DEBTORS' SUBSIDIARIES."

The first point that we make with respect to that purported proposition of law is one we have already made in discussing the major contention of the Petitioners in this case, namely: That the rule of law above contended for entirely omits the essential factor of loss before a surcharge can be made against a Trustee.

Cases Cited But Not Discussed.

The SEC Brief (pp. 26 to 38) cites the following cases without any discussion whatever:

United States ex rel. Willoughby v. Howard, 302 U. S. 445, 452.

Meinhard v. Salmon, 249 N. Y. 458, 164 N. E. 545 (1928).

Taylor v. Standard Gas & Electric Co., 306 U. S. 307.

Woods v. City National Bank and Trust Co., 312 U. S. 262.

Young v. Higbee Co., 324 U. S. 204.

In re Norcor Mfg. Co., 109 F. 2d 407 (C. A. 7).

In re Realty Associates Securities Corp., 56 F. Supp. 1068 (E. D. N. Y.).

In re Schroeder Hotel Co., 86 F. 2d 491 (C. A. 7).

Bigelow v. RKO Pictures, Inc., 327 U. S. 251, 265.

Story Parchment Co. v. Paterson Parchment Paper Co., 282 U. S. 555, 563.

Carson, Pirie, Scott & Co. v. Turner, 61 F. 2d 693 (C. A. 6).

In re Curtis, 76 F. 2d 751 (C. A. 2).

Young v. Potts, 161 F. 2d 597, 600 (C. A. 6).

Magruder v. Drury, 235 U. S. 106, 118-120.

In re Waern Building Corp., 145 F. 2d 584, 586 (C. A. 7) certiorari denied, 324 U. S. 871.

In re Grosse, 24 F. 2d 305, 306 (C. A. 7).

We have already called attention in our comment on the Petitioners' Brief to what we consider to be a violation of the rules of Advocacy which imposes the burden upon opposing counsel of reading and analyzing a number of cases cited in a Brief but not discussed therein. We have read and analyzed all of the cases cited by the SEC and listed above but, in view of the summary manner in which they are cited we feel we are not called upon to give them any particular attention. We will merely tell this Court that, in our considered opinion, not a single one of the cases so cited is of any help or value in determining the issue in the case at Bar, and that each one of those cases, upon analysis of its facts, will be found to be inapplicable to the facts in the Darrow case.

A Single Case Discussed in the SEC Brief

Only one case is considered and discussed throughout the entire Argument of the SEC Brief on the merits. This is the case of *Bigelow v. RKO Pictures, Inc.*, 327

U. S. 251, decided by this Court in 1945. After *lifting* a part of a sentence from the opinion in that case, to the effect "that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created", the SEC Brief then quotes the following statement from the opinion as being applicable to the case at bar:

"Any other rule would enable the wrongdoer to profit by his wrongdoing at the expense of his victim. It would be an inducement to make wrongdoing so effective and complete in every case as to preclude any recovery, by rendering the measure of damages uncertain. Failure to apply it would mean that the more grievous the wrong done, the less likelihood there would be of recovery."

This Court will remember the *Bigelow* case and the opinion of the Court by the late Chief Justice Stone. It is with some reluctance that we point out what we consider the misinterpretation of this Court's language in that case. The quotation given in the SEC Brief is a part of a paragraph from Chief Justice Stone's opinion dealing with the measure of damages before a jury. The quotation which is given in the SEC Brief is preceded in the opinion by the following language:

"But the jury may make a just and reasonable estimate of the damage based on relevant data, and render its verdict accordingly. In such circumstances 'juries are allowed to act on probable and inferential, as well as upon direct and positive proof'." (Citing several cases.)

It is upon that basis and upon that limited reference to the things which a jury may consider that Chief Justice Stone lays down the doctrine quoted in the SEC Brief as above indicated.

We leave without further comment the question whether that quotation so heavily relied upon by the SEC Brief has any application whatever to this *Darrow Case* where the

matter is in equity and not before a jury, and where the issue is the justice of surcharging a trustee and not of proving damages before a jury.

We conclude our discussion of the SEC Brief on the merits, by repeating again our assertion that none of the cases or authorities cited in it have any application to the case at bar.

IX.

MOTION OF WHISTON AND SCHWARTZ TO BE SUBSTITUTED AS PETITIONERS.

This Court in granting the Petition for Certiorari reserved its decision on the motion of Whiston and Schwartz, Successor Trustees, to be substituted for Mosser as the Petitioner herein. Respondent Darrow has already discussed this question fully in his ANSWER TO THE MOTION AND BRIEF in support thereof at Pages 2-13 inclusive. That discussion, we submit, establishes the proposition that this Court should not grant the motion on jurisdictional grounds and that it should not permit such substitution. The main points we there stress are:

1. There was a lack of diligence of the Movants in the premises.
2. The Bankruptcy statute on death or removal of a Trustee does not apply to that Motion.
3. The Rule of this Court (Rule 19 (4)) concerning substitution of parties is inapplicable.
4. The cases and decisions of this Court are squarely against that Motion.

We feel we should not burden the Court with a further discussion and argument on this point.

CONCLUSION.

We respectfully submit that under all the facts and circumstances in this case as shown by the Record and under the law applicable thereto as discussed above, the Petition for Certiorari should be dismissed or the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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Dated at Chicago, Illinois,
March 31, 1951.

APR 9 1951

**CHARLES ELMORE CHOPLEY
CLERK**

**IN THE
Supreme Court of the United States**

OCTOBER TERM, 1950.

No. 461

**IN THE MATTER OF
FEDERAL FACILITIES REALTY TRUST, A COMMON
LAW TRUST, AND NATIONAL REALTY TRUST, A
COMMON LAW TRUST,**

Debtors.

**STACY C. MOSSER, SUCCESSOR TRUSTEE OF NATIONAL
REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST, AND
JOHN W. GUILD, INDENTURE TRUSTEE, ETC.,**

Petitioners,

vs.

**PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY
TRUST AND FEDERAL FACILITIES REALTY TRUST,**

Respondent.

**REPLY OF PETITIONERS TO REPLY BRIEF OF
RESPONDENT DARROW.**

**CARL W. MULFINGER,
J. EDGAR KELLY,
STANLEY A. KAPLAN,
JACOB B. COURSHON,
*Counsel for Petitioners.***

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1950.

No. 461.

IN THE MATTER OF

**FEDERAL FACILITIES REALTY TRUST, A COMMON
LAW TRUST, AND NATIONAL REALTY TRUST, A
COMMON LAW TRUST,**

Debtors.

**STACY C. MOSSER, SUCCESSOR TRUSTEE OF NATIONAL
REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST, AND
JOHN W. GUILD, INDENTURE TRUSTEE, ETC.,**

Petitioners,

vs.

**PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY
TRUST AND FEDERAL FACILITIES REALTY TRUST,**

Respondent.

**REPLY BRIEF OF PETITIONERS TO BRIEF OF
PAUL E. DARROW, RESPONDENT.**

In order to place certain of the allegations of fact set forth by Respondent Darrow in his brief in correct perspective and to point out some of the respects in which Darrow's brief avoids primary questions in this case, petitioners are filing this reply.

Respondent Darrow asserts, in defense to the surcharge for breach of fiduciary duty, that the estate enhanced

in value and indebtedness of the various subsidiaries was reduced during the eight years of his trusteeship. The bulk of the securities purchased or retired during his administration were purchased through sinking funds created by the subsidiaries pursuant to plans of reorganization. The trustee was under a duty to carry out this program, and it was for carrying out his duties, which included this activity, that he received compensation. The enhancement in value was attributable to general economic conditions.

The allegations on pages 2 and 3 of Respondent's brief concerning profits allegedly made during the period of Darrow's trusteeship, are not responsive to the question of the breach of fiduciary duty raised by these proceedings. A trustee should make purchases as cheaply as possible without permitting his employees to make profits in connection with such transactions. The fact that certain securities purchased by the trust subsequently increased in value does not exculpate the trustee for liability in connection with their acquisition. Respondent proposes a novel and pernicious doctrine to the effect that surcharging a trustee should depend upon a mathematical relation between the amount of alleged "profits" during the trustee's administration as contrasted with the amount of improper gains which the trustee permitted and assisted his employees to exact. The law requires strict observance of fiduciary standards on the part of trustees; to do as Respondent contends, namely, to offset alleged profits against the amount of prohibited gains, would be a sharp break with existing law and a serious undermining of trust administration. This court should make it clear by its decision in this case that no such doctrine of mathematical equations will be tolerated and that a trustee must observe the highest standards of fiduciary duty without knowingly permitting diversion from the trust of any assets or benefits at all.

In these proceedings Darrow remained in office for over eight years without filing any report or account in the Federal Facilities Realty Trust proceedings and only filing one account in the National Realty Trust proceedings (R. 546); he never sought or received approval by order of court for the securities transactions involving Jacob Kulp and Myrtle Johnson or his condonation thereof or participation therein; he did not disclose to anyone, including his attorney, the fact that his key employees were trafficking in the securities of the trust with his permission and assistance (R. 512).

Respondent's brief states (p. 40) that Darrow first learned of any complaint against his administration when the director of the SEC called him to his office. Darrow of course knew that an order had been entered in 1942 directing the appointment of Andrews, a certified public accountant, to investigate the two trusts (R. 350). This appointment had been made on the prayer of a petition filed in the cause raising serious questions concerning his administration. Since the Andrews report provided much of the information on the basis of which a surcharge was imposed upon Darrow, it seems somewhat cavalier to say, as the Respondent does (Res. Br. 9) that there is nothing in the Andrews report which caused Darrow to resign as trustee nor is there anything in that report reflecting on his loyalty to the trusts or his accounts.

Attention must be called to the fact that Darrow claims credit for so-called "profit" in connection with a portion of the Seligman transaction (Res. Br. 64). This whole transaction is described on pages 7 and 8 of petitioners' original brief and will not be repeated at length here. It must be pointed out here, however, that certain bonds of the subsidiaries, constituting a portion of the securities in Lot I purchased at the Seligman sale, were resold by Miss

Johnson to Darrow for \$12,447, although the cost to Miss Johnson of all the securities in that lot was approximately \$8,000; moreover, Darrow paid trust funds in advance of delivery for these securities, as was his custom (R. 519), to finance the transaction for Miss Johnson. Furthermore, additional bonds of subsidiaries procured in the purchase of Lot I were sold to customers of Colonial who subsequently resold them to Darrow (R. 522). As a result of this transaction for which Darrow claims special consideration, Miss Johnson realized from the securities in Lot I a total of \$34,905, or \$10,701 more than was paid for both Lots I and II; Lot II, which she and Jacob Kulp now claim to own in other proceedings pending below, consists of \$286,100 principal amount of Federal bond, 62,358 units of beneficial interest of Federal representing over 60% of the equity in Federal and 10,761 units of National representing about 25% of the equity in National, and Lot II probably represents control in the reorganizations of both trusts (R. 517-21, 556-7). The conduct of Darrow in connection with the Seligman transaction was improper and petitioners are astonished that any part of such a transaction should even be suggested as a basis for credit to the trustee. This creates a reaction somewhat similar to that caused by the following statement made by Darrow (R. 341):

"It was my opinion that I had a right to deal in these securities, selling them either to the trusts or subsidiaries and earn a profit. (I (personally) didn't do any trading out of consideration for Judge Holly and my father.) I realized it would be dangerous practice because somebody would try to show that I had been unreasonable in my dealings with the trusts. * * *. I considered it appropriate to permit Miss Johnson, Kulp or Colonial to trade in the bonds of the subsidiaries for a profit. * * *. Whether the profit they realized in transactions with me was reasonable

or not was of no consequence to me. The important thing was that I did not pay them more than I was paying anybody else."

Another item for which Darrow claims credit (Res. Br. 3-4) is the acquisition of Federal bonds of the par value of \$84,000. These securities were acquired in 1937 when Darrow paid \$12,000 to Colonial Securities Company (a securities company operated and controlled entirely by Myrtle Johnson and Jacob Kulp, described more fully on page 5 of petitioners' brief herein) which money Colonial used to purchase from the First National Bank of Chicago a note for \$27,300 (guaranteed by Jacob Kulp individually) together with the collateral for such note, namely, certain subsidiary bonds with a total par value of \$33,000, bonds of Federal with a total par value of \$84,000, and a non-negotiable receipt of National City Bank of Cleveland. Colonial took Darrow's \$12,000, made this purchase from the bank and then sold to Darrow for \$12,000 the bonds of the subsidiaries. Colonial retained the deposit receipt and also the note guaranteed by Jacob Kulp, thus making a profit for Colonial and releasing Kulp from obligation under a note guaranteed by him, all through the use of trust funds advanced by Darrow. The \$84,000 of Federal bonds were handled in a highly unusual fashion. They were then "given" to Darrow by Miss Johnson on behalf of Colonial without cost; their existence was publicly revealed for the first time during interrogation at the hearing before the Special Master on July 11, 1946, almost ten years after they had been acquired. These bonds had not been disclosed in any of Darrow's accounts nor in the accompanying schedules, nor had they been turned over to Darrow's successor despite an order almost three years earlier requiring Darrow to make a complete turn-over of all the securities of the trust. Darrow had, however, on December 9, 1943 filed an affidavit in the

proceedings—without notice to parties of record—setting forth the acquisition of these securities, stating that the bonds were received free of cost and that their disposition seemed to be a matter for the direction of the court. The affidavit further stated that Darrow's intention had been eventually to deliver the bonds to Federal. This transaction, however, is certainly not one for which Darrow can claim any credit (R. 540-43).

Respondent also alleges, on page 40 of his brief, that 27 subsidiaries of the two trusts were successfully reorganized and put on their feet by Darrow's management. It should be noted in passing that a large number of these subsidiaries are now in process of reorganization for the second time. Another matter which should be considered in connection therewith is the following transaction in which the Special Master found Darrow "deserving of censure" (R. 558). Darrow advanced \$750 from the trust to permit Miss Johnson to purchase a large number of assets in the bankruptcy sale of Jacob Kulp & Company for \$1,500. Miss Johnson then sold to Darrow certain books and records of Jacob Kulp & Company (which already were in Darrow's possession) for \$750, leaving Miss Johnson certain securities which she sold for about \$350 and also leaving her with certain alleged accounts receivable of Jacob Kulp & Company of disputed and doubtful validity against the trust's various subsidiaries and one other company, in the aggregate amount of \$172,436.47, which she then assigned to Mr. Bauman, the son-in-law of Jacob Kulp. Darrow while trustee and president of various subsidiaries filed no objection to the allowance of certain of these accounts receivable to the extent of \$81,311.34 in reorganization plans of six of the subsidiaries (R. 534-8). The Special Master found (R. 538):

"It should be noted, however, that Miss Johnson participated in most, if not all, of these reorganiza-

tions. At this time it appears that she and Kulp, by virtue of an understanding with Bauman, had an interest in the accounts receivable, for they were to share in them, when and if Bauman's loans were repaid."

The Special Master further found that (R. 552):

"Of course, no attempt is made in these hearings to consider the fairness of these plans of reorganization of the subsidiaries, but it should be noted that Miss Johnson participated in reorganizations where the claims of Jacob Kulp & Company (then held by Bauman) were set up. She admitted she knew these accounts receivable were set up. She admitted she knew these accounts receivable arose from advances of commingled funds. She said, however, she never discussed their origin with Darrow and never suggested that objections might be filed to these claims. It must also be borne in mind that during this period Miss Johnson and Colonial were purchasing bonds from bondholders and reselling them to Darrow at a profit—sometimes on the same day."

The argument on pages 12-37 of Respondent's brief relies primarily on the inapplicable cases cited below, which are considered by Respondent at great length.¹ None of these cases is applicable to the present situation. In each of these cases the fiduciary was held not subject to surcharge because the alleged improper action was neither known to him nor could have been known to him in the exercise of reasonable diligence. All of these cases indicated that, if the trustee had been informed of the actions criticized or were guilty of supine negligence or were at fault, an entirely different situation would have existed. Trustee

1. *Willoughby v. Howard*, 302 U. S. 445; *Taylor v. Benham*, 5 How. 233; *Osgood v. Franklin*, 2 Johnson's Ch. 27; *Ellig v. Naglee*, 9 Calif. 684; *In re Marcus*, 67 F. (2) 1008; *In re Portex*, 43 Fed. Supp. 859; *Evans v. Williams*, 276 F. 650; *Ex Parte Belchier*, 1 Amb. 218; *Speight v. Gaunt*, 9 A. C. 1 and *In re Vickery*, 1 Ch. 572.

Darrow was guilty of supine negligence and was at fault in the most flagrant way. He knew fully of his employees' trafficking in securities of the trust; he knew they were making profits and he continued his dealings with them. All of these cases stressed by Respondent are therefore inapplicable here.

Respondent also relies upon the case of *Semans v. United Lumber Company*, 281 Pa. 404; 126 Atl. 776 for the proposition that a trustee who has performed acts "in good faith" will not be surcharged. The facts in that case are very different from the factual situation here presented. The ineptitude manifested by Darrow and his failure to use proper efforts to effect purchases of securities at the lowest possible price distinguish this case sharply from the situation in the *Semans* case and make it evident that the trustee is not acting in the "good faith" which the *Semans* case contemplates. If any other interpretation were given to the *Semans* case it would be contrary to the doctrine of *Magruder v. Drury*, 235 U. S. 106, and to the general line of federal authority with respect to a trustee's inability to deal with his estate. See, *In re Real Estate Mortgage Guaranty Co.*, 55 Fed. Supp. 749.

Respondent also relies strongly (Res. Br. 20-23) upon the case of *SEC v. Chenery Corp.*, 318 U. S. 80 (1943) and states that this court has rejected the so-called "stern rule" of fiduciary responsibility. It is unnecessary to call this court's attention to the fact that this court decided the second *Chenery* case in *SEC v. Chenery Corp.*, 332 U. S. 194 in which this court sustained the commission's order requiring preferred stock acquired by management interests to be surrendered at cost plus dividends. This court stated in the second *Chenery* case, quoting the first *Chenery* case:

"Abuse of corporate position, influence, and access

to information may raise questions so subtle that the law can deal with them effectively only by prohibitions not concerned with the fairness of a particular transaction."

This court, in the second *Chenery* case, as in numerous other cases which were cited in petitioners' brief, has rejected the rule of laxity which Respondent calls a "liberal policy." As was stated by this court in the first *Chenery* case:

"We reject a lax view of fiduciary obligations and insist upon their scrupulous observance."

Respondent reiterates in his brief the assertion that there has been no loss to these estates and even asserts that these petitioners do not contend that the estates suffered any loss. Respondent's brief states, page 38:

"Petitioners do not argue that there were any losses. On the contrary they tacitly admit (Br. 25) these Estates 'suffered no loss in the transactions involved.' "

The actual quotation from petitioners' brief which Respondent has eviscerated said:

"Even if the estate suffered no loss in the transactions involved, which the Special Master found was not the case (R. 554), that fact still would not insulate from liability a trustee who had been derelict in his fiduciary duty."

These estates did suffer financial loss and are seeking recoupment of moneys to which they are entitled and compensation for injuries inflicted upon them. Among other things, they were deprived of the right to purchase securities at lower prices; they were deprived of opportunities to make advantageous purchases, and they were deprived of the profits made by the trustee's employees; they were deprived of the undivided loyalty of their fiduciaries. Al-

though petitioners are pointing out these losses, petitioners wish to make it clear that they believe the law is unequivocal to the effect that a trustee is liable for a breach of duty regardless of whether any loss is inflicted upon his estate.

Respondent asserts on page 9 of his brief and elsewhere that the bonds of Federal will be paid in full. There is no assurance whatsoever of that fact and there is no supporting evidence in the record cited to that effect. This is pure conjecture. However, even if this were the fact, which is certainly not admitted, the trust must enforce all of its rights for the benefit of the participation certificates a large part of which were distributed to the public.

Respondent cites *National Labor Relations Board v. Pennsylvania Steamship Co.*, 95 L. Ed. 318, decided February 26, 1951 for the proposition that the Court of Appeals is not in error for upsetting concurrent findings of fact by the Special Master and the District Judge without determination that these findings were clearly erroneous. It should be noted that the *Pennsylvania Steamship Co.* case involved direct review by the Court of Appeals of a finding of the National Labor Relations Board; there was no determination of fact by a district court. Consequently, the *Pennsylvania Steamship Co.* decision, if analogous to the present situation, supports the proposition for which petitioners contend, namely, that a finding by the first fact finding agency, concurred in by the court which reviews it, should not be overturned on appeal therefrom unless clearly erroneous.

Conclusion.

Respondent devotes most of his brief to interpretations concerning the common law with respect to surcharges, but Respondent does not advert at all to the authoritative statement of common law set forth in the Restatement of the Law of Trusts. The Restatement in Sec. 225, Vol. 1, p. 639, which is directly applicable to the present factual situation says, among other things, that a trustee is liable for acts of his agent which, if done by the trustee, would constitute a breach of trust, if the trustee either directs or permits the act of the agent or approves or acquiesces in or conceals the act of the agent or neglects to take proper steps to compel the agent to redress the wrong. Respondent Darrows' conduct falls within all of these prohibited categories for which liability is imposed.

We respectfully submit that this court should reverse the decision of the Court of Appeals for the Seventh Circuit in this case and sustain the surcharge imposed by the District Court.

Respectfully submitted,

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